Supreme Court, U.S.
FILED
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APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1970

~~No.~~ 70-49

STATE OF HAWAII, *Petitioner*,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, UNION OIL COMPANY OF CALIFORNIA, SHELL OIL COMPANY and CHEVRON ASPHALT COMPANY,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Certiorari Filed December 8, 1970
Certiorari Granted March 1, 1971

APPENDIX

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1970

No. 1060

STATE OF HAWAII, *Petitioner*,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, UNION OIL COMPANY OF CALIFORNIA, SHELL OIL COMPANY and CHEVRON ASPHALT COMPANY,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Certiorari Filed December 5, 1970

Certiorari Granted March 1, 1971

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RELEVANT DOCKET ENTRIES IN THE PROCEEDINGS BELOW

United States Court of Appeals
For the Ninth Circuit

24603

Date	Filings-Proceedings
1969	
July 28	Filed Order (E Ca) Granting Permission to Appeal under §1292(b). (Clerk's Fee: Appellant $25) Docketed cause and entered appearances of counsel.
Sept. 8	Filed Cert Transc of Record on Appeal, in five volumes; Vol I, Pleadings; Vols II-V, Rptr's Transc, orig and 1 copy.
Nov. 4	Filed two add'l copies of Vol K of Record: Clerk's Fee: 84 pp (Clerk's Fee: Appellant $5.00).
Dec. 24	Lodged 4 copies of Applts Document re: motion and brief in the matter of State of Georgia vs. Pennsylvania RR Co as filed in SC.
1970	
Jan. 12	Loaned copy of 5 vol record and applt's brief to Calif Atty Genl office—for 2 days. rtd 1/14/70.
Jan. 26	Received letter of Jan. 23/70 from counsel Kirkham (Pillsbury, Madison & Sutro) re *Philadelphia Housing Authority* now reported at par. 73013 of CCH Trade Regulation Reports.
Jan. 26	Filed 25 Appellees Briefs.

Jan. 26—Filed Orig and 24 Amicus Curiae Brief of the State of Calif.

Filed Motion and Order (C) extending time to file applt reply brief to Feb 23, '70.

Calendared 4/15

Feb. 20—Filed 25 Appellants Reply Briefs—Union Oil Co. in reply to Appellee, and Amicus Brief of the State of California.

—Standard Oil, Shell Oil and Chevron Asphalt

—Standard Oil, Shell Oil and Chevron Asphalt in reply to brief of California as Amicus Curiae.

March 25—Recvd. letter of 3/24 from applts re: add'l argument time (panel).

April 7—Recvd. directive (WBL) advising counsel that court will allow 45 minutes for each side to argue.

April 7—Filed order (M) granting req for add'l time.

April 15—Cause argued and submitted to M. W. T.

Aug. 14—Rcd. add'l authority on behalf of respondents (to M. W. Tr).

Aug. 31—Recvd. letter of 8/27 from appellee counsel re: add'l authority (panel).

Sept. 25—Ordered opinion (Merrill) filed and judgment to be filed and entd.

Sept. 25—Filed opinion. Reversed and remanded.

Sept. 25—Filed and entered Judgment.

Oct. 5—Filed orig and 3 appellee's application for stay of mandate to M:

Oct. 5—Filed application and order. (M) staying judgment to November 5, 1970.

Oct. 7—Issued certified copy of record to Clk, SC, for certiorari (Clerk's Fee: Appellant $9.60).

Oct. 9—Filed orig and three of Cost Bill for applts Std Oil (attached to Judgment).

Oct. 9—Filed orig and 3 of Cost Bill for applts Union Oil Co (attached to Judgment).

Oct. 14—Filed orig and 9 appellee's motion for an additional stay of judgment to W.

Oct. 15—Filed appellee's application (W) ext. staying judgment to December 5, 1970.

Dec. 8—Recvd. notice from Clk, SC, re: filing pet for cert SC#1060.

A true copy
Attest 3/8/71
Wm. B. Luck, Clerk
by /s/ Raymond D Heuret
Deputy

United States District Court
District of Hawaii

Civil No. 2826

Title of Case

STATE OF HAWAII,

Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA,
UNION OIL COMPANY OF CALIFORNIA,
and SHELL OIL COMPANY,
and CHEVRON ASPHALT COMPANY,

Defendants.

5-24-68
(amended comp.)

Basis of action: Violation of the Clayton Act. Sec. 4&16
Sections 11 & 13 Chapter 205A RLH

Attorneys

For Plaintiff:

Bert T. Kobayashi
Attorney General
State of Hawaii
Joseph L. Alioto
Maxwell M. Blecher
Lawrence Alioto
111 Sutter St. S.F.

For Defendant:

Roy A. Vitousek, Jr.
(Standard Oil & Chevron Asphalt Co.)
William M. Swope
(Shell Oil Co.)
Frank D. Padgett
(Union Oil Co. of Calif.)
Daniel H. Case
(Standard Oil Co. of Calif.)

Date	*Plaintiff's Account*	
1968		
Apr. 11	Atty Gen. Hawaii	Received $15.00
19	Treas. U.S.	Disbursed $15.00

Date	Filings-Proceedings
1968	
Apr. 1	Complaint and Summons filed Summons issued
Apr. 3	Return on Service of Writ filed—served Std Oil Co. of Calif.
	Return on Service of Writ filed—served Union Oil Co. of Calif.
	Return on Service of Writ filed—served Shell Oil Co.
Apr. 4	Pre-Trial Order No. 1 filed *Pence* (Prelim PT set for May 13, 1968 @ 10 a.m.) cc to parties by registered mail
Apr. 8	Motion and Memorandum for Pre-Trial Conference Under Rule 16 filed
Apr. 19	Proposed Pre-trial Order No. 2 and Agenda filed

Apr. 29—Stipulation filed *Pence*

May 7—Addendum to Agenda of Plaintiff's Proposed Pretrial Order No. 2 filed

May 10—Memorandum of Standard Oil Company of California in Response to Plaintiff's Proposed Pretrial Order No. 2 and Agenda filed

May 15—Memorandum of Shell Oil Company in Response to Plaintiff's Pretrial Conference Agenda and Draft Pretrial Order No. 2 filed

May 17—Memorandum For Defendant Union Oil Company of California in Response to Plaintiff's Agenda and Draft Pretrial Order No. 2 filed

May 23—Entering proceedings—appearances by attorneys—oral statements of the Issues Involved—P.T.O. No. 2—Plaintiff's motion to file an Amended Complaint— *Pence*

May 24—Amended Complaint filed

June 7—Pre-Trial Order No. 2 filed ——— *Pence*
(Hearing on Motions and Objections set for 7-30-68 @ 10:00 a.m.)

June 14—Plaintiff's First set of Interrogatories to Defendants Propounded by Plaintiff Pursuant to Rule 33 Federal Rules of Civil Procedure filed

Motion to Produce Under Rule 34 filed

Plaintiff's Second Set of Interrogatories to Defendants filed

June 21—Reporter's Transcript, Thursday, May 23, 1968 filed (Cydney von Savoye, Reporter, U.S. District Court, San Francisco, California)

June 27—Motion of Shell Oil Company for Production of Documents, and Supporting Memorandum and Affidavit filed

Motion of Shell Oil Company to Strike Certain Portions of Amended Complaint, and Memorandum in Support of Motion filed.

Interrogatories of Shell Oil Company filed

June 28—Notice of Motion and Motion of Defendants Standard Oil Company of California and Chevron Asphalt Company for an Order Dismissing Count Two of the Amended Complaint filed—set for 7-30-68 @ 10:00 a.m. before Judge Pence

Memorandum of Defendants Standard Oil Company of California and Chevron Asphalt Company in Support of Motion to Dismiss Count Two of the Complaint filed

Statement of Standard Oil Company of California and Chevron Asphalt Company that said defendants Join in the Motions to Strike filed by Shell Oil Company and Union Oil Company of California filed

Notice of Motion and Motion of Defendants Standard Oil Company of California and Chevron Asphalt Company for Production of Documents Under Rule 34 filed

June 28—First Set of Interrogatories Propounded by Defendants Standard Oil Company of California and Chevron Asphalt Company filed

June 28—Certificate of Service filed

July 1—Motion of Defendant Union Oil Company of California to Dismiss Count Two of the Amended Complaint; to Strike; and for Separate Statement filed

Defendant Union Oil Company of California's First Motion for Production of Documents filed

Certificate of Service filed

First Interrogatories Propounded to Plaintiff by Defendant Union Oil Company of California filed

First Request for Admission Propounded to Plaintiff by Defendant Union Oil Company of California filed

Memorandum for Defendant Union Oil Company of California in Support of Motions to Dismiss Count Two of the Amended Complaint; to Strike; and for Separate Statement filed

July 18—Motion to Strike and Objections of Shell Oil Company to Plaintiff's Rule 34 Motion to Produce and First and Second Set of Interrogatories and Supporting Memorandum filed

July 19—Plaintiff's Memorandum in Opposition to Motion of Defendants Standard Oil Company and Chevron Asphalt Company to Dismiss Count II of the Complaint filed

Memorandum in Opposition to Motion of Defendant Union Oil Company for Separate Statement filed

Memorandum of Points and Authorities in Response to the Motion to Produce of the Standard Oil Company of California, Chevron Asphalt Company, Union Oil Company of California and Shell Oil Company filed

Plaintiff's Opposition to Defendants' Motion to Dismiss or Strike Portions of the Amended Complaint filed

Objections of Defendant, Union Oil Company of California to Plaintiff's Interrogatories filed

Affidavits of R. A. Goddard, M. E. Joyce, E. A. McFadden, C. E. Rathbone and M. S. Thompson in Support of Objections of Defendant Union Oil Company to Plaintiff's Second Set of Interrogatories and Motion to Produce Under Rule 34 filed

Affidavit of G. H. O'Leary in Support of Objections of Defendant Union Oil Company of California to Plaintiff's First Set of Interrogatories filed

Certificate of Service filed

Objections of Defendant Union Oil Company of California to Plaintiff's Motion to Produce Under Rule 34 filed

Memorandum for Defendant Union Oil Company of California in Support of Objections to Plaintiff's Interrogatories and Motion to Produce Under Rule 34 filed

Objection to Defendant Union Oil Company's Request for Admission of Facts and Motion to Strike filed

July 22—Objections of Defendants Standard Oil Company of California and Chevron Asphalt Company to Plaintiff's Motion to Produce and First and Second Sets of Interrogatories and Motion of Said Defendants Seeking Protective Order filed

Memorandum of Standard Oil Company of California and Chevron Asphalt Company in Support of Objections to Plaintiff's Motion to Produce and First and Second Set of Interrogatories and Motion of Said Defendants Seeking Protective Order filed

Affidavit of J. P. Bowman filed.

Certificate of Service filed

Affidavit of Joseph I. Hendrick filed

July 26—Reply Brief in Support of Plaintiff's Motion to Produce and First and Second Sets of Interrogatories filed

Reply Memorandum of Shell Oil Company to Plaintiff's Opposition to Motion to Strike Certain Portions of Amended Complaint filed

July 29—Reply of Defendants Standard Oil Company and Chevron Asphalt Company to Plaintiff's Memorandum in Opposition to Motion to Dismiss Count II of the Complaint filed

Reply Brief for Defendant Union Oil Company of California in Support of its First Request for Admission, and in Opposition to Plaintiff's Motion to Strike filed

Closing Brief for Defendant Union Oil Company of California in Support of Motions to Dismiss Count Two of the Amended Complaint, to Strike, and for Separate Statement filed

Certificate of Service filed

July 30—Entering proceedings—Various Motions—Discussion re various motions—stipulations to be memorialized in form of Pretrial order *Pence*

July 31—Transcript of Proceedings filed (o) (Hearing of 7-30-68)

Aug. 2—Order filed *Pence*
(re: objections to request for admission of facts)

Aug. 19—Pre-Trial Order No. 3 filed *Pence*

Aug. 23—Second Amended Complaint filed

Sept. 9—Third Amended Complaint filed

Oct. 1—Answers of Shell Oil Company to Written Interrogatories Pursuant to Order of August 19, 1968 filed

Answers of Defendant Union Oil Company of California to Interrogatories Contained in Pretrial Order No. 3 filed

Oct. 2—Answers to the First Set of Interrogatories Propounded by Defendants Standard Oil Company of California and Chevron Asphalt Company filed

Answer to First Request for Admission Propounded to Plaintiff by Defendant Union Oil Company of California filed

Answers to First Interrogatories Propounded to Plaintiff by Defendant Union Oil Company of California filed

Answers to the First Set of Interrogatories Propounded by Defendant Shell Oil Company filed

(Exhibits to be attached to the various interrogatory answers located in large box in the vault)

Oct. 3—Defendants Standard Oil Company of California's and Chevron Asphalt Company's Answers to Interrogatories Contained in Pretrial Order No. 3 filed

Affidavit of J. P. Bowman Accompanying the Answers of Defendants Standard Oil Company of California and Chevron Asphalt Company to Interrogatories Contained in Pretrial Order No. 3 filed

Certificate of Service by Mail filed

Oct. 15—Motion of Shell Oil Company to Strike Certain Allegations of Count One and to Dismiss Count Two and Count Three of the Third Amended Complaint filed

Oct. 16—Motion of Defendant Union Oil Company of California to Dismiss or Strike Count One and to Dismiss Counts Two and Three of the Third Amended Complaint, and in the Alternative to Strike filed

Memorandum of Defendant Union Oil Company of California in Support of its Motions Directed to the Third Amended Complaint filed

Certificate of Service filed

Affidavit of C. E. Rathbone in Support of Defendant Union Oil Company of California's Motion Relative to Count Three of the Third Amended Complaint filed.

Oct. 17—Notice of Motion and Motion of Shell Oil Co. to Strike Plaintiff's Answers to Interrogatories, to Compel Further Answers and for Expenses filed

Notice of Motion and Motion of Defendants Standard Oil Company of California and Chevron Asphalt Company for an Order Dismissing Counts Two and Three of the Third Amended Complaint filed

Statement of Standard Oil Company of California and Chevron Asphalt Company that Said Defendants

Join in the Motions to Strike and to Strike or Dismiss filed by Shell Oil Company and Union Oil Company of California filed

Joint Memorandum of Defendants in Support of Motion to Dismiss Parens Patriae Claim—Count Two of Third Amended Complaint filed

Joint Memorandum of Defendants in Support of Motion to Dismiss Class Action—Count Three of Third Amended Complaint filed

Certificate of Service by mail filed

Oct. 25—Stipulation Extending Time filed—(Pltf may have to and including 11-4-68 to respond to Shell Oil Co.'s m/compel further answers to interrogatories)

Oct. 29—Statement of Shell Oil Company Joining in Motion to Dismiss Count I filed by Union Oil Company filed

Nov. 1—Stipulation and Order re Date of Hearing filed

Pence

(re: motions to be heard 12-13-68 @ 9:30 a.m. before Judge Pence in San Francisco)

Nov. 4—Stipulation Extending Time filed—to and including 11-18-68

Nov. 6—Stipulation Extending Time filed—plaintiff may have to and including 11-18-68 to respond to deft Shell Oil Co.'s m/to compel further answers to interrogatories.

Notice of Motion of Shell Oil Company to Dismiss Complaint for Failure of Plaintiff to Comply with Discovery Order of This Court and for Expenses filed—set for 11-13-68 @ 10:00 a.m.

Nov. 14—Stipulation Extending Time filed
(re: Pltf has to and including 11-18-68 to respond to Shell Oil Co.'s M/Dismiss complaint—further stipulated that hearing said motion be held on 12-13-68)

Nov. 18—Memorandum in Opposition to Shell's Motion to Dismiss for Failure to Comply with Discovery Orders filed

Nov. 19—Plaintiff's Memorandum in Opposition to Defendants' Motions Directed to the Third Amended Complaint filed

Memorandum of Plaintiff in Opposition to Defendant Union Oil Company's Separate Motion Directed to the Third Amended Complaint filed

Memorandum in Opposition to Shell's Motion to Strike Plaintiff's Answer to Interrogatories filed

Certificate of Mailing filed

Dec. 3—Reply to Plaintiff's Opposition to Motions Regarding Plaintiff's Failure to Comply with Discovery Orders filed

Dec. 5—Joint Memorandum for all Defendants in Support of Defendants' Motions Directed to the Third Amended Complaint filed

Dec. 13—Entering proceedings—Defendants Motions as to Dismissal of Certain Parts of Complaint—argument—motions submitted—(C. von Savoye) *Pence*

1969

Jan. 29—Reporter's Transcript filed (von Savoye—12-13-68)

Feb. 24—Memorandum Decision on Defendants' Motions to Dismiss or Alternatively to Strike Certain Allegations of Count One and to Dismiss Count Two and Count Three of the Third Amended Complaint filed (parties notified)

Mar. 5—Fourth Amended Complaint filed

Mar. 19—Stipulation filed *Pence*
(re: 4th amended complaint)

Apr. 21—Motion of Defendants to Strike Paragraph 16(f) of the Fourth Amended Complaint, and Memorandum of Points and Authorities filed

Brief of Defendants Shell Oil Company and Union Oil Company of California in Support of Motion to Dismiss Counts II and III of the Fourth Amended Complaint filed

Memorandum of Points and Authorities in Support of Motions Directed to Count II and Count III of the Fourth Amended Complaint filed

Joint Motion of Defendants Shell and Union for Change of Venue, and Supporting Memorandum and Affidavits, Appendix 1 (Narrative Summary of Typical Prejudicial Publicity) and Exhibit A (Representative Sampling of Prejudicial Publicity) filed

May 5—Plaintiff's Memorandum in Support of Counts Two and Three of the Fourth Amended Complaint filed

Memorandum of Plaintiff in Opposition to Motion of Defendants to Strike Paragraph 16(f) of the Fourth Amended Complaint filed

Plaintiff's Brief in Opposition to the Joint Motion of Defendants Shell and Union for Change of Venue filed

May 8—Motion for Leave to File a Motion to Produce Pursuant to Rule 34 of the Federal Rules of Civil Procedure filed

May 23—Plaintiff's Supplemental Brief in Opposition to Defendants' Motion to Strike Paragraph 16(f) of the Fourth Amended Complaint filed

Reply Memorandum In Support of Motions Directed to Count II and Count III of the Fourth Amended Complaint filed

May 29—Reply Memorandum for Defendants Shell Oil Company and Union Oil Company of California in Support of Their Motion to Transfer filed

Entering proceedings—Various Motions—argument—defts' M/Change of Venue denied without prejudice—M/Dismiss Count II of the complaint denied without prejudice—defts' M/Dismiss Count III of the Complaint granted—defts' M/Certification of denial of the M/Change of Venue and to Dismiss Count II of the Complaint granted—Defts' M/Strike Sec. 16(F) of the Complaint granted w/Leave to Amend—Court to file memorandum decision—(DO) *Pence*

June 4—Order Vacating Oral Order re Certification filed (copy of order mailed to parties) *Pence*

June 5—Amendment to Paragraph 16(f) of the Fourth Amended Complaint filed

June 10—Transcript of Proceedings filed (5-29-69—D. Orndoff)

June 19—Stipulation Re Plaintiff's Motion for Leave to File a Motion to Produce Under Rule 34 filed *Pence*

July 1—Supplemental Answers to the First Set of Interrogatories Propounded by Defendant Shell Oil Company, Appendix A and Appendix B Filed (Appendix A and B located in vault)

July 2—Decision on Plaintiff's Parens Patriae Count filed *Pence*

(re: deft's M/Dismiss Count II denied)

cc: AG, State of Hawaii, R. Vitousek, W. Swope, F. Padgett

Order and Certification for Interlocutory Appeal Under Section 1292(b) of Title 28 of the United States Code filed *Pence*

(re: M/Change of Venue denied; M/Strike par 16(f) of 4th Amended Complaint granted with leave to amend; Deft's M/Dismiss Count II of 4th Amended Complaint denied; Defts' M/Dismiss Ct. III of 4th Amended Complaint granted without prejudice; court certifies order denying defts' motion to dismiss Ct. II of complaint for interlocutory appeal under section 1292(b) of Title 28 USC)

cc: distributed to same attys as above (also to D. Case, Esq)

July 28—Stipulation Extending Time filed *Pence*

(re: all defts have to and including 8-12-69 to answer pltf's 4th amended complaint)

Pre-Trial Order Number 4 filed *Pence*

July 30—Order filed (granting Petition for Permission to Appeal under 28 USC Sec. 1292(b)) (US Court of Appeals for 9th Circuit) notified AG, State of Hawaii, Mr. Vitousek, Mr. Swope, Mr. Padgett & Mr. Case

Aug. 1—Bond for Costs filed

Aug. 6—Bond for Costs filed

Aug. 8—Stipulation Extending Time filed *Pence*
(re: All defts shall answer pltf's 4th amended complaint within 30 days after final determination of interlocutory appeal with respect to denial of deft's M/Dismiss Count II of 4th amended complaint)

Aug. 18—Motion of Shell Oil Company to Dismiss The Complaint For Failure of The Plaintiff to Answer Interrogatories and For Expenses filed

Stipulation Pursuant to Rule 11(f) of the Federal Rules of Appellate Procedure filed

Aug. 19—Motion for Leave to File Notice of Depositions filed

Order filed (granting above motion) *Pence*

cc: AG State of Hawaii; Gilbert E. Cox; Frank D. Padgett; Roy A. Vitousek, Jr.; Daniel H. Case

Aug. 21—Plaintiff's Reply to Shell Oil Company's Motion to Dismiss filed

Aug. 25—Notice of Taking Depositions filed

Aug. 28—Notice to Take Depositions filed

Sept. 2—Shell Oil Company's Reply to Plaintiff's Opposition to Shell's Motion to Dismiss filed

[April 1, 1968]

In the United States District Court
for the District of Hawaii

No. 2826

State of Hawaii,
Plaintiff,

vs.

Standard Oil Company of California,
Union Oil Company of California,
and Shell Oil Company,
Defendants.

COMPLAINT
(Sherman Antitrust Act)
(Jury Demanded)

The above-named plaintiff files this complaint against the above-named defendants and, demanding trial by jury, complains and alleges as follows:

COUNT ONE

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the named defendants under Sections 4 and 16 of the Clayton Act (15 U.S.C. 12, 26) and under Sections 11 and 13, Chapter 205A of the Revised Laws of

Hawaii 1955, as amended, to secure damages from and injunctive relief against the named defendants for violations of the antitrust laws as hereinafter alleged.

2. Each defendant maintains an office, transacts business, and is found within the District of Hawaii, and is within the jurisdiction of the Court for the purposes of service.

II

The Parties

3. The State of Hawaii is one of the sovereign states which through its various departments, agencies, institutions, universities and boards has been a substantial purchaser of refined petroleum products, including without limitation, gasoline and asphalt.

4. Standard Oil Company of California, a Delaware corporation, with its principal offices located in San Francisco, California, is hereby named a defendant herein.

5. Union Oil Company of California, a California corporation, with its principal offices located in Los Angeles, California, is hereby named a defendant herein.

6. Shell Oil Company, a Delaware corporation, with its principal offices located in New York, New York, is hereby named a defendant herein.

III

Co-Conspirators

7. Other persons, firms or corporations participated as co-conspirators in violation of the antitrust laws hereinafter alleged.

IV

Nature of Trade and Commerce

8. Each of the defendants is an integrated oil company engaged in the business of purchasing and producing crude oil, transporting crude oil and refined petroleum products, refining crude into refined petroleum products and in the wholesale and retail sale of refined petroleum products.

9. The only commercial oil refinery in the State of Hawaii is owned by defendant Standard. Substantially all of the crude oil refined at said refinery is imported into Hawaii, under applicable Federal regulations, primarily from Far Eastern countries.

10. The refined petroleum products, including gasoline, produced at said refinery are distributed by defendant through service station and other outlets most of which are operated by lessee dealers. Some refined petroleum products are sold by Standard directly to Federal, State and Municipal government agencies. Substantial quantities of gasoline are shipped from the Hawaii refinery to the mainland for sale and distribution there. Finally, Standard supplies refined petroleum products to the other defendants and other major integrated oil companies for their resale and/or distribution in Hawaii.

11. Each of the defendants ships refined petroleum products, including gasoline, from the mainland to Hawaii for resale and/or further distribution in Hawaii or elsewhere.

12. Gasoline represents approximately 90% in terms of dollar value, of the refined petroleum products sold by

each defendant through service stations. By means of various provisions in their leases, subleases and supply contracts with service station operators, and in other ways, each defendant has been able to and does dominate and control the manner in which independent service station operators conduct their respective businesses. Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as the type, quality and brands of automotive accessories and miscellaneous merchandise and the price thereof which the dealer handles and sells and many other details of the dealers' business affairs. Each defendant compels and controls dealer participation in regional, national and local promotional programs such as the giving of stamps, steak knives, glasses and game tickets. This domination and control over the dealers is enforced by each defendant through a system of policing which subjects the dealer to inspection, surveillance and harassment by dealer representatives and others.

13. During the period covered by this complaint there has been a continuous and regular flow in foreign commerce of crude oil obtained from sources outside the State of Hawaii through the Standard refinery in Hawaii producing gasoline and other refined petroleum sold to service stations and others in Hawaii and on the mainland.

V

Offenses Charged

14. Beginning at a time unknown to plaintiff, and continuing thereafter, up to and including the date hereof, defendants entered into unlawful contracts, and a combination and conspiracy in unreasonable restraint of trade and commerce in the sale, marketing and distribution of refined petroleum products and said defendants have combined and conspired as herein set forth to monopolize, and said defendants have monopolized such trade and commerce in violations of Sections 1 and 2 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U.S.C., secs. 1 and 2) and Sections 2 and 7 of Chapter 205A of the Revised Laws of Hawaii 1955, as amended.

15. The aforesaid contracts, combination and conspiracy to restrain trade and commerce, and the combination and conspiracy to monopolize and the monopolization of such trade and commerce, have consisted of a continuing agreement and concert of action between defendants the substantial terms, purposes and intent of which have been that said defendants and the co-conspirators:

(a) agreed to fix, stabilize and establish wholesale and resale prices on gasoline;

(b) agreed to fix, stabilize and establish prices for liquid asphalt;

(c) agreed to rig bids on the sale of gasoline and liquid asphalt to the State of Hawaii, its political sub-

divisions, or to contractors submitting bids to the State and its political subdivisions;

(d) agreed to restrict the number of refiners of crude oil in Hawaii;

(e) agreed to purchase or assign import quotas for foreign crude and to exchange refined petroleum products among themselves so as (i) to exclude actual and/or potential competitors and (ii) to maintain high, arbitrary prices;

(f) agreed to price refined petroleum products in Hawaii on the basis of posted crude oil prices on the mainland even though most of the refined petroleum products sold in Hawaii are produced from lower price foreign crude oil.

VI

Injury to Plaintiff

16. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize, and monopolization have resulted in the plaintiff through its respective departments, institutions, agencies, etc., paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage; and when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

COUNT TWO

17. Plaintiff realleges the matters set out in paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12 and 13 of Count One

herein with the same force and effect as though the allegations of each of said paragraphs were set forth in full herein.

18. Beginning at a time unknown to plaintiff and continuing thereafter up to and including the date hereof, each defendant has violated Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13(a)) and Section 1.1, Chapter 205A, Revised Laws of Hawaii 1955, as amended, by charging higher prices for gasoline of like grade and quality sold at wholesale in Hawaii than charged for gasoline of the same grade and quality sold by each of said defendants at major West Coast cities, including but not limited to San Francisco and Los Angeles.

19. The effect of such price discriminations has been and may be to substantially lessen competition and tend to create a monopoly in the production, distribution and sale of refined petroleum products, principally gasoline, in the State of Hawaii and further to injure, destroy and prevent competition in said line of commerce in said State.

20. The gasoline subject to the unlawful discrimination alleged in the preceding paragraphs has moved and moves directly in interstate commerce from refinery facilities of defendants in California to Hawaii.

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants (a) have combined in restraint of trade and commerce hereinbefore described; (b) have combined to monopolize; (c) have actually monopolized the trade and commerce hereinbefore described in violation of Sections

1 and 2 of the Sherman Act and Sections 2 and 7 of Chapter 205A, Revised Laws of Hawaii 1955, as amended; and (d) have unlawfully discriminated in price in violation of 15 U.S.C. 13(a) and Section 1.1 of Chapter 205A, Revised Laws of Hawaii 1955, as amended.

2. That plaintiff recover its damages, which, when ascertained, be trebled as required by Section 4 of the Clayton Act;

3. That defendants and each of them be enjoined from continuing their unlawful conduct;

4. That plaintiff be awarded reasonable attorneys' fees as provided by Section 4 of the Clayton Act; and

5. That plaintiff recover the costs of litigation as provided by Section 4 of the Clayton Act.

Dated: Honolulu, Hawaii, April 1, 1968.

State of Hawaii
By Bert T. Kobayashi
Attorney General
Gilbert K. Hara
Patricia Kim
Douglas S. Hasegawa
Deputy Attorneys General
Joseph L. Alioto
Maxwell M. Blecher
Lawrence Alioto
By /s/ Gilbert K. Hara
By /s/ Maxwell M. Blecher
Attorneys for Plaintiff.

[Sept. 6, 1968]

[Title omitted in printing]

THIRD AMENDED COMPLAINT

(Sherman Anti-trust Act)

(Jury Demanded)

The above-named plaintiff files this complaint against the above-named defendants and, demanding trial by jury, complains and alleges as follows:

COUNT ONE

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the named defendants under Sections 4 and 16 of the Clayton Act (15 U.S.C. 12, 26), to secure damages from, and injunctive relief against, the named defendants for violations of the antitrust laws as hereinafter alleged.

2. Each defendant maintains an office, transacts business, and is found within the District of Hawaii, and is within the jurisdiction of the Court for the purposes of service.

II

The Parties

3. The State of Hawaii is one of the sovereign states which through its various departments, agencies, institutions, universities and boards has been a substantial purchaser of refined petroleum products, including without limitation, motor gasoline and asphalt.

4. Standard Oil Company of California (hereinafter, Standard), a Delaware corporation, with its principal offices located in San Francisco, California, hereby is named a defendant herein.

5. Chevron Asphalt Company (hereafter, Chevron), a Delaware corporation, with its principal offices in San Francisco, California, a wholly-owned subsidiary of Standard Oil Company of California, hereby is named a defendant herein.

6. Union Oil Company of California (hereafter, Union), a California corporation, with its principal offices located in Los Angeles, California, hereby is named a defendant herein.

7. Shell Oil Company (hereafter, Shell), a Delaware corporation, with its principal offices located in New York, New York, hereby is named a defendant herein.

III

Co-Conspirators

8. Other persons, firms or corporations participated as co-conspirators in violation of the antitrust laws hereinafter alleged.

IV

Nature of Trade and Commerce

9. Each of the defendants is an integrated oil company engaged in the business of purchasing and producing crude oil, transporting crude oil and refined petroleum products, refining crude into refined petroleum products and in the wholesale and retail sale of refined petroleum products.

10. The only commercial oil refinery in the State of Hawaii is owned by defendant Standard. Substantially all of the crude oil refined at said refinery is imported into Hawaii, under applicable Federal regulations, primarily from Far Eastern countries.

11. The refined petroleum products, including motor gasoline, produced at said refinery are distributed by defendant through service station and other outlets most of which are operated by lessee dealers. Some refined petroleum products are sold by Standard and/or Chevron directly to Federal, State and Municipal government agencies. Substantial quantities of motor gasoline are shipped from the Hawaii refinery to the mainland for sale and distribution there. Finally, Standard supplies refined petroleum products to the other defendants and other major integrated oil companies for their resale and/or distribution in Hawaii.

12. Each of the defendants ships refined petroleum products, including motor gasoline, from the mainland to Hawaii for resale and/or further distribution in Hawaii or elsewhere.

13. Motor gasoline represents approximately 90% (in terms of dollar value) of the refined petroleum products sold by each defendant through service stations. By means of various provisions in their leases, subleases and supply contracts with service station operators, and in other ways, each defendant has been able to and does dominate and control the manner in which independent service station operators conduct their respective businesses. Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours

of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as the type, quality and brands of automotive accessories and miscellaneous merchandise and the price thereof which the dealer handles and sells and many other details of the dealers' business affairs. Each defendant compels and controls dealer participation in regional, national and local promotional programs such as the giving of stamps, steak knives, glasses and game tickets. This domination and control over the dealers is enforced by each defendant through a system of policing which subjects the dealer to inspection, surveillance and harassment by dealer representatives and others.

14. During the period covered by this amended complaint there has been a continuous and regular flow in foreign commerce of crude oil obtained from sources outside the State of Hawaii through the Standard refinery in Hawaii producing motor gasoline and other refined petroleum products sold to service stations and others in Hawaii and on the mainland.

V

Offenses Charged

15. Beginning at a time unknown to plaintiff, and continuing thereafter up to and including the date hereof, defendants entered into unlawful contracts, and a combination and conspiracy in unreasonable restraint of trade and commerce in the sale, marketing and distribution of refined petroleum products and said defendants

have combined and conspired as herein set forth to monopolize, and said defendants have monopolized, such trade and commerce in violations of Sections 1 and 2 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U.S.C. Sections 1 and 2).

16. The aforesaid contracts, combination and conspiracy to restrain trade and commerce, and the combination and conspiracy to monopolize and the monopolization of such trade and commerce, have consisted of a continuing agreement and concert of action between defendants the substantial terms, purposes and intent of which have been that said defendants and the co-conspirators:

(a) agreed to fix, stabilize and establish unreasonably high wholesale and resale prices on motor gasoline and other refined petroleum products;

(b) agreed to maintain and enforce resale prices on motor gasoline;

(c) agreed to fix, stabilize and establish unreasonably high prices for liquid asphalt;

(d) agreed to rig bids on the sale of motor gasoline, liquid asphalt and other refined petroleum products to the State of Hawaii, its political subdivisions, or to contractors submitting bids to the State and its political subdivisions;

(e) agreed to restrict the number of refiners of crude oil in Hawaii;

(f) agreed to purchase or assign import quotas for foreign crude and to exchange refined petroleum products among themselves in order to: (i) exclude actual

and/or potential competitors, and (ii) maintain high, arbitrary prices;

(g) agreed to price refined petroleum products in Hawaii on the basis of posted crude oil prices on the mainland even though most of the refined petroleum products sold in Hawaii are produced from lower priced foreign crude oil.

VI

Injury to Plaintiff

17. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize, and monopolization have resulted in the plaintiff, through its respective departments, institutions, agencies, etc., paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage. However, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

COUNT TWO

18. The above-named plaintiff, acting in its capacity as *parens patriae,* and/or as trustee for the use of its citizens who purchased refined petroleum products, from any defendant or co-conspirator herein, realleges the matters set out in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Count One herein with the same force and effect as though the allegations of each of said paragraphs were set forth in full herein.

19. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination and conspir-

acy to monopolize, and monopolization have resulted in the plaintiff, through its respective departments, institutions, agencies, etc. and in its citizens, paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage to itself and its citizens, however, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

COUNT THREE

20. The above-named plaintiff, acting on its own behalf and on behalf of its citizens who purchased refined petroleum products from any or all of the above-named defendants or co-conspirators, brings this action individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure, as amended, as the representative of the aforesaid class, to obtain damages from, and equitable relief against, the above-named defendants; and so doing, plaintiff realleges the matters set out in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Count One herein with the same force and effect as though the allegations of each of said paragraphs were set forth in full herein.

21. The nature of the offenses charged, commerce involved, and relief sought present substantial questions of both law and facts common to the named plaintiff and to all of the members of the class. Because of the large number of citizens of the State of Hawaii who have purchased motor gasoline and other refined petroleum products from the named defendants and/or their retail dealers and other co-conspirators and because of the

expense and burden to the parties and to the Court of litigating their claims separately, it is impracticable to bring them all before the Court. The named plaintiff, however, fairly insures the adequate representation of the interests of the entire class.

22. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize, and monopolization have resulted in the plaintiff, through its respective departments, institutions, agencies, etc., and in its citizens, paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage to itself and its citizens; however, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants (a) have combined in restraint of trade and commerce hereinbefore described; (b) have combined to monopolize; (c) actually have monopolized the trade and hereinbefore described in violation of Sections 1 and 2 of the Sherman Act;

2. That plaintiff recover its damages, which, when ascertained, be trebled as required by Section 4 of the Clayton Act;

3. That plaintiff recover, as trustee or as representative of the above-pleaded class, the damages sustained by its citizens, which, when ascertained, be trebled as required by Section 4 of the Clayton Act;

4. That defendants and each of them be enjoined from continuing their unlawful conduct;

5. That plaintiff be awarded reasonable attorneys' fees as provided by Section 4 of the Clayton Act; and

6. That plaintiff recover the costs of litigation as provided by Section 4 of the Clayton Act.

Dated: September 6, 1968.

State of Hawaii
By Bert T. Kobayashi,
Attorney General

Gilbert K. Hara
Patricia Kim Park
Douglas S. Hasegawa
Deputy Attorneys General

Joseph L. Alioto
Maxwell M. Blecher
Francis O. Scarpulla
By /s/ Francis O. Scarpulla

[Oct. 14, 1968]

[Title omitted in printing]

NOTICE OF MOTION AND MOTION OF DEFENDANTS STANDARD OIL COMPANY OF CALIFORNIA AND CHEVRON ASPHALT COMPANY FOR AN ORDER DISMISSING COUNTS TWO AND THREE OF THIRD AMENDED COMPLAINT

To State of Hawaii and to Bert T. Kobayashi, Gilbert K. Hara, Patricia Kim Park, Douglas S. Hasegawa, Joseph L. Alioto, Maxwell M. Blecher, Lawrence Alioto and Francis O. Scarpulla, its attorneys:

Please take notice that on the 13th day of November, 1968, at 10 o'clock A.M., or as soon thereafter as counsel can be heard, defendants STANDARD OIL COMPANY OF CALIFORNIA and CHEVRON ASPHALT COMPANY will bring the following motion on for hearing before the above-entitled Court at the United States Court House in Honolulu, Hawaii.

MOTION

Defendants Standard Oil Company of California and Chevron Asphalt Company pursuant to Rules 12(b)(6) and 23(c)(1) of the Federal Rules of Civil Procedure hereby move this Court for an order dismissing Counts Two and Three of the complaint on the grounds that said Counts Two and Three fail to state claims upon which relief can be granted, and on the ground that Count Three fails to meet the prerequisites of Rule 23. This motion is based upon the foregoing notice of motion; the joint memorandum of defendants in support of motion to dismiss parens patriae claim—Count Two of third amended complaint; the joint memorandum of defendants in

support of motion to dismiss class action—Count Three of third amended complaints; the affidavits of A. E. Stevens, J. W. Phegley, Otto Hoefler, W. L. Sanor and the various retail dealers submitted in support of the motion to dismiss Count Three; and upon all the records and papers on file with the Clerk of the above-entitled Court in the above-entitled action.

Dated: October 14, 1968.

Pillsbury, Madison & Sutro
Francis R. Kirkham
Richard J. MacLaury
James B. Atkin
Pratt, Moore, Bortz & Case
Daniel H. Case
Roy A. Vitousek Jr.
By /s/ Francis R. Kirkham
Attorneys for Defendants Standard Oil Company of California and Chevron Asphalt Company

[Oct. 15, 1968]

[Title omitted in printing]

MOTION TO STRIKE CERTAIN ALLEGATIONS OF COUNT ONE AND TO DISMISS COUNT TWO AND COUNT THREE OF THE THIRD AMENDED COMPLAINT

COUNT ONE

I. Pursuant to Rule 12 of the Federal Rules of Civil Procedure, SHELL OIL COMPANY (Shell), a defendant in this action, by its attorney herein moves to strike from Count One of the Third Amended Complaint the following:

A. All references to the wholesale aspects of the gasoline marketing industry on the grounds that the plaintiff has no interest in and can make no claim concerning that aspect of gasoline marketing since it makes no purchases at that level;

B. All references to crude oil import quotas inasmuch as the formation and administration of those quotas are immune from attack in this lawsuit; and

C. All references to "refined petroleum products" in that the interests of the plaintiff do not include any product other than gasoline and liquid asphalt.

In support of each of the above motions, Shell relies on its Memorandum in support of like motions to strike

like allegations from the First Amended Complaint (See Memorandum dated June 24, 1968, pp. 2-17).

COUNT TWO

II. Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Shell moves to dismiss Count Two of the Third Amended Complaint on the grounds that (1) no *parens patriae* cause of action by plaintiff can or does exist with respect to the matters alleged; and (2) no such cause of action has in fact been properly alleged by the plaintiff as "parens patriae."

In support of the above motion Shell relies on the Joint Memorandum in Support of Defendants' Motion to Dismiss Count Two of the Third Amended Complaint, dated October 15, 1968.

COUNT THREE

III. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Shell herein moves to dismiss Count Three of the Third Amended Complaint on the ground that it fails to comport with the requirements for a class action and would further create impossible burdens of management. The affidavit of D. Campbell Ross, attached hereto as Exhibit A, is filed in support of this motion.

In support of the above motions Shell relies on the Joint Memorandum in Support of Defendants' Motions to

Dismiss Count Three of the Third Amended Complaint, dated October 15, 1968.

Respectfully submitted,

/s/ William Simon

William Simon
Richard T. Colman
Howrey, Simon, Baker & Murchison
1707 H Street, N. W.
Washington, D. C. 20006

Gilbert E. Cox
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Honolulu, Hawaii 96808

S. R. Vandivort
50 West 50th Street
New York, New York 10020
Attorneys for Defendant
SHELL OIL COMPANY

Dated: October 15, 1968.

AFFIDAVIT OF D. CAMPBELL ROSS

County of Honolulu
State of Hawaii—ss

D. Campbell Ross, being first duly sworn on oath deposes and says:

1. I am and have been for several years State Manager in Hawaii for SHELL OIL COMPANY (Shell).

2. In connection with my duties as State Manager I am responsible for all Shell's sales of gasoline and related refined petroleum products in Hawaii.

3. The sale of gasoline to the State of Hawaii by Shell is entirely on competitive bids submitted to the State by Shell and others on a sealed bid basis. The formation of Shell's bid price is in no way related to or dependent upon the price charged at wholesale by Shell or the prices charged by its dealers at retail, except that at the request of the State the bid price may be stated as a discount from Shell's posted tank wagon price. Rather, the said bid prices are formulated individually for the State upon Shell's estimate of a successful competitive price and other competitive factors relating to the supply and demand for gasoline. The current bid price submitted by Shell to the State and on which it is now selling gasoline to the State in Oahu is 16¢ to 17¢ a gallon below the average or mean posted retail price charged at service stations selling Shell brand gasoline on Oahu. The State of Hawaii owns and utilizes its own gasoline storage facilities.

4. The State of Hawaii does pay certain credit card invoices on purchases at retail from Shell dealers. Credit card purchases from Shell dealers account for a very small percentage of the purchases made by the State. In the

month of October, 1967, credit card invoices show that the State purchased petroleum products, including products other than gasoline, on Shell credit cards, in the total amount of $556.12. Most of those purchases were on the Island of Molokai. Excluding Molokai purchases, the State's total purchases that month on Shell credit cards were only $85.30. This represents no more than 200 gallons of gasoline. This is a typical month for the State's purchases from Shell. In that same month, Shell sold the State 47,000 gallons of gasoline on bid, making the Shell credit card purchases 0.04% of the State's purchases from Shell. Shell's total monthly sales in Hawaii are about 4 million gallons.

5. Only the City and County of Honolulu, the Federal Government and certain large commercial plantations also purchase from Shell upon a sealed bid basis.

6. Approximately 85%-90% of the motor gasoline sold by Shell in Hawaii is sold for the purpose of resale at retail to motorists. Approximately 40% of that volume is sold for resale to motorists at Post Exchanges and Ships Stores. There were about 670 service stations of all brands in the State of Hawaii in 1966. About 122 of that number were Shell branded stations. In addition to Shell stations there have been during the period of the last four years also stations supplied by the following companies: Standard, Time Oil Company, Union, Flying A (Tidewater), Phillips, Texaco and Armour.

7. I have been the senior Shell marketing person in Hawaii for more than five years. Throughout that time Shell has never controlled, fixed or set, nor sought to control, fix, or set, the resale price for gasoline sold by any of its independent service station dealers. To the contrary,

all Shell dealers have been and are told by Shell that they are free to determine their own prices for gasoline in response to their own judgment of competition and other factors and each of such dealers in fact determines his resale price free of any control by Shell. It has continually been my observation that gasoline prices often vary at some service stations from time to time. The prices at which gasoline is sold at Post Exchanges and Ships Stores have been observed to be as low as 29.9¢ for regular grade gasoline.

8. The wholesale or tank-wagon price charged Shell dealers for regular grade gasoline in Oahu is 1¢ higher than the tank-wagon price charged Shell dealers in Phoenix, Arizona and Reno, Nevada. It is 2¢ per gallon higher than the tank-wagon price charged Shell dealers in San Francisco or Los Angeles. The mean retail price in Honolulu of 42.4¢ for a gallon of regular grade gasoline [an average of the two most frequently posted prices of 41.9 and 42.9] is 8.5¢ higher than the mean price of 33.9¢ per gallon charged in California.

9. On August 12 and 13, 1968, I caused Shell employees working under my direction to make a full survey of the retail prices posted at all service stations in Hawaii. The following are the prices observed for regular grade gasoline in Oahu:

35.9	40.0	41.1	42.1	42.9	45.9
37.8	40.1	41.3	42.2	43.0	46.1
37.9	40.4	41.4	42.3	43.5	46.3
38.5	40.5	41.5	42.5	43.9	
38.9	40.8	41.7	42.6	44.3	
39.5	40.9	41.9	42.7	44.9	
39.9	41.0	42.0	42.8	45.1	

The following were some of the discounts and promotions observed then being offered:

1¢ off for $2.00 purchase;

Free coke with 10 gallons;

Gold Bond, Mahalo and Royal Stamps in single, double and triple and quadruple relations to amounts purchased;

Two, three, four and five cents discounts;

Free car wash;

Six cents military discounts.

10. It is my belief based on many years' experience in Hawaii that almost every service station in Oahu gives at least some of its customers, though not necessarily to all customers or in the same amount to all customers, a discount, promotion or give-away.

11. Shell does not sell paving asphalt to the State of Hawaii. It sells paving asphalt only to distributors and contractors. The State, in turn, purchases paving in place from contractors which includes paving asphalt mixed with aggregate and laid in place as part of a finished job, in connection with a bid contract, including within the bid price all of the various other materials and labor costs that are part of the completed job.

/s/ D. Campbell Ross

Subscribed and sworn to before me
this 14th day of October, 1968.
Dorothy P. Shimamura
Notary Public
1st Judicial Circuit
State of Hawaii.

My Commission Expires 9/15/70

[Certificate of Service omitted in printing]

[Oct. 15, 1968]

[Title omitted in printing]

MOTION OF DEFENDANT UNION OIL COMPANY OF CALIFORNIA TO DISMISS OR STRIKE COUNT ONE AND TO DISMISS COUNTS TWO AND THREE OF THE THIRD AMENDED COMPLAINT, AND IN THE ALTERNATIVE TO STRIKE.

Defendant Union Oil Company of California moves the Court as follows:

1. To dismiss or strike Count One of the Third Amended Complaint as sham.

2. To dismiss Count Two of the Third Amended Complaint, for failure to state a claim upon which relief can be granted.

3. To determine that Count Three of the Third Amended Complaint may not be maintained as a class action, upon the ground that none of the requirements of F.R.Civ.P. Rule 23 for maintenance of a class action is present, and that, since Count Three serves no purpose other than to attempt to convert Count One into a class action, it should therefore be dismissed.

4. In the event the motion to dismiss or strike Count One as sham be not granted, to strike the following portions of Count One:

(a) paragraph 13 thereof (or in the alternative, all of the allegations of paragraph 13, except the first sentence); and

(b) subparagraph 16(f) thereof, upon the ground that said allegations are and each of them is immaterial and impertinent.

Among the material upon which the motion to dismiss or strike Count One as sham is based are plaintiff's "Answer to First Request for Admission Propounded to Plaintiff by Defendant Union Oil Company of California", plaintiff's "Answers to First Interrogatories Propounded to Plaintiff by Defendant Union Oil Company of California", its "Answers to the First Set of Interrogatories Propounded by Defendants Standard Oil Company of California and Chevron Asphalt Company", and its "Answers to the First Set of Interrogatories Propounded by Defendant Shell Oil Company".

Among the material upon which the motion to determine that Count Three may not be maintained as a class action and should therefore be dismissed is based is the affidavit of C. E. Rathbone filed herewith. All the foregoing motions are also based upon the Third Amended Complaint, the memoranda served and filed herewith, and upon all of the files herein.

Respectfully submitted,
L. A. Gibbons
Douglas C. Gregg
E. A. McFadden
Moses Lasky
Malcolm T. Dungan
Brobeck, Phleger & Harrison
Frank D. Padgett
Padgett, Greeley, Marumoto & Akinaka
By /s/ Moses Lasky
Attorneys for Defendant,
Union Oil Company of California.

October 15, 1968

EXCERPTS FROM REPORTER'S TRANSCRIPT DATED DECEMBER 13, 1968

(Rep.Tr. p. 24, lines 12-22):

[Mr. Blecher] What you really then get down to, when you take all these ancient notions and shift them aside, is whether or not parens patriae constitutes an effective means of the State, acting through its Attorney General, recovering the money that has been taken from the State by reason of a price fixing arrangement applicable to consumers and whether it is simpler to administer that kind of lawsuit on the one hand than to face the administrative problems that have been imposed by the statute under Rule 23 of class action procedure. **[R.T. 24]**

(Rep.Tr. p. 26, lines 4-9):

[Mr. Blecher] This doesn't really get at the issue because we are arguing about something which really never was focused upon in Georgia. We are talking about taking a concept, a legal concept, here and embellishing, if you will, expanding upon it, if you will, crystallizing it so that it becomes a really effective vehicle. **[R.T. 26]**

(Rep.Tr. p. 31, lines 1-21):

[Mr. Blecher] Now parens patriae constitutes, by some slight extension in this case, in our judgment, the single most effective vehicle for doing that. It permits the State, acting as Trustee, to cover whatever may be decided to be the measure of damage to recover some meaningful amount in an instance where the consumer has been—and by consumer I am not limiting it just to the motorist—I am talking about business entities, plantations and others where those people have wrongfully parted with some money and, necessarily, by that wrong-

fully parting, injured the state in its economy, whether it is because they paid less income tax or whether it was because that money was taken out literally—whether the money was actually taken out of the State and brought back to the mainland or some other more esoteric form—but if there was a price-fixing conspiracy, and for purposes of this notion we have to assume that, and if it operated to extract that money, I don't see how the Court could help but conclude as a matter of economic logic that there has been adverse impact upon the State. **[R.T. 31]**

(Rep.Tr. p. 32, lines 4-9):

[Mr. Blecher] What we are really talking about here is some extension of the traditional concepts of parents [sic] patriae. It does involve creative thinking, new thinking and investigation. I think it is time the judiciary addressed itself to this problem in terms of the modern needs of a modern society. **[R.T. 32]**

(Rep.Tr. p. 64, line 23 through p. 65, line 9):

[Mr. MacLaury] Under the circumstances, Your Honor, I say this is not a proper class. It poses more problems than it solves, and I join with Mr. Simon **[R.T. 64]** in saying that this action, in its present form, should be dismissed.

We do not say that there can't be any class action against the oil companies in Hawaii. I don't say there can't be any class action, but I say this one is not a proper class action.

The Court: You are addressing yourself to the one before the Court and that is all?

Mr. MacLaury: Yes. **[R.T. 65]**

(Rep.Tr. p. 95, lines 16-24):

[Mr. Simon] That isn't the issue, Your Honor. The issue is whether there is any possible way that you can establish this class suit, the one that is alleged in this complaint. It may be that this plaintiff could allege a proper class suit with a different class or it may be that a different plaintiff could allege a proper class suit for some of this class. But the only issue before Your Honor today is whether this class suit can be sustained. [R.T. 95]

(Rep.Tr. p. 97, lines 11 through p. 98, line 11):

The Court: You urge the carving must take place at the time of the allegation. Mr. Blecher says you get a later date and carve up the classes. You maintain that the carving must be at least the lines of the cleavage, must be set at the time the allegation is made?

Mr. Simon: Yes, Your Honor. This is their complaint. They had complete freedom to draw whatever classes they chose, and they chose to see that the class was everybody in the State of Hawaii who buys gasoline. This is their choice.

Next he says to you that he wouldn't spend four seconds on the question of whether the 600 service stations in Hawaii create a separate question for each, and yet I say to Your Honor that there is [R.T. 97] no way he can avoid that question, because he says he is talking about a vertical conspiracy. If it was just a horizontal conspiracy of the three defendants, we would have one problem. But he says he is talking about a vertical conspiracy between the defendants and every service station in the Islands. You can't do that by a formula. You can't prove by mass

evidence that the defendants conspired with each of them when their own complaint only says that most of the people were involved. The complaint doesn't even say all of them. [R.T. 98]

(Rep.Tr. p. 98, line 22 through p. 99, line 7):

Mr. Simon: My sentence had a few words more to it. This is a simple little lawsuit if—and it is a big "if"—Your Honor, if all that is involved is whether Standard, Union and Shell conspired on bids to the State. That is not a case that involves [R.T. 98] a great deal of discovery. It should be a simple case to try.

But it is a great deal different if you have to try the question of whether 600,000 motorists buying gasoline at 600 different service stations selling six or seven different brands of gasoline were all involved in one big conspiracy. [R.T. 99]

[Feb. 24, 1969]

In The United States District Court
For The District Of Hawaii

Civil No. 2826

State of Hawaii,
Plaintiff,

vs.

Standard Oil Company of California,
Union Oil Company of California,
Shell Oil Company, and
Chevron Asphalt Company,
Defendants.

MEMORANDUM DECISION ON DEFENDANTS' MOTIONS TO DISMISS OR ALTERNATIVELY TO STRIKE CERTAIN ALLEGATIONS OF COUNT ONE AND TO DISMISS COUNT TWO AND COUNT THREE OF THE THIRD AMENDED COMPLAINT

Plaintiff State of Hawaii is seeking legal and equitable relief from defendants' alleged violations of Sections 1 and 2 of the Sherman antitrust act.[1] Plaintiff's Third Amended Complaint alleges three counts, as follows: Count I charges injury to the plaintiff in its proprietary capacity as the purchaser of "refined petroleum prod-

[1]Title 15 U.S.C. §§ 1 and 2.

uots"[2] from defendants; Count II asserts a cause of action for the State of Hawaii acting in its capacity as *parens patriae*, and/or as trustee for the use of its citizens who purchased refined petroleum products . . .";[3] and Count III pleads a class action under Rule 23, Fed. R. Civ. P., on behalf of plaintiff and "its citizens who purchased refined petroleum products. . . ."[4] Defendants have moved alternatively to strike certain allegations of Count I, and to dismiss Counts II and III.[5] After extensive briefing, and argument on December 13, 1968, this court (a) orally denied defendants' motion to dismiss Count I as a sham, and (b) took the remaining motions under advisement. The oral ruling of December 13, 1968 is herewith AFFIRMED. The court's decisions on the motions taken under advisement are set forth below.

I. *Motions To Strike Certain Allegations of Count I*

Defendants would strike paragraphs 13 (dealing with the wholesaling of gasoline and the relationship between defendants and their service station operators) and 16 (f) ("[Defendants] agreed to purchase or assign import quotas for foreign crude and to exchange refined petroleum products among themselves . . . .") of Count I, and all references in Count I to "refined petroleum products."

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[2]Third Amended Complaint, filed September 9, 1968, at page 7, paragraph 17.

[3]Id. at page 7, paragraph 18.

[4]Id. at page 8, paragraph 20.

[5]See motion of Shell Oil Company filed October 15, 1968; motion of Union Oil Company of California filed October 16, 1968; and motions of Standard Oil Company of California and Chevron Asphalt Company filed October 17, 1968.

A. *Paragraph 13*

Defendants maintain plaintiff's allegation regarding defendants' alleged control and domination of retail outlets are irrelevant since plaintiff purchased gasoline on direct bid. Plaintiff replies that its employees do make occasional service station purchases by credit card. Primarily, however, plaintiff defends its allegations on the ground that *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, (1962) precludes fragmentation of evidence proving the alleged violation.

Plaintiff has alleged a broad conspiracy to monopolize and control sale and distribution of petroleum products, particularly gasoline and liquid asphalt, in the State of Hawaii. Plaintiff contends that an integral part of this scheme is elimination of competing sellers and domination of the marketing of petroleum products, which is partially achieved by manipulation of retailers serving the consuming public. Presumably it is this control over all aspects of petroleum product marketing in Hawaii which is at least one of the factors allegedly enabling defendants to effectively rig sealed bids submitted to the State.

The court can not say at this stage of this proceeding that the allegations of paragraph 13 are in no way relevant or pertinent to plaintiff's proprietary interests. The law permits plaintiff to explore into the totality of the violation alleged. Plaintiff need not segregate and compartmentalize the allegedly all-pervasive conspiracy into solely those aspects having direct bearing on plaintiff's interest. *Continental Ore, supra.* Defendant's motions to strike Count I, paragraph 13, are DENIED.

B. *Paragraph 16(f)*

Defendants contend they are precluded by law from purchasing or assigning import quotas for foreign crude oil imported into this country pursuant to the provisions of the Federal Oil Import Program.[6] Plaintiff conceded that Count I, paragraph 16(f), is inartfully drafted, and does not accurately state its assertions. Defendants' motions to Strike Count I, paragraph 16(f), are Granted, without prejudice to plaintiff to amend its complaint and more precisely indicate its claims.

C. *References To "Refined Petroleum Products"*

Defendants assert plaintiff's interests do not extend to the myriad of petroleum products other than gasoline and liquid asphalt, and have moved that the complaint be so limited. Plaintiff has agreed to limit its discovery requests to those two products. This agreement is embodied in Pre-Trial Order No. 3, paragraph VI (filed August 19, 1968), which provides:

> "Until further order of the Court it is understood that the term 'refined petroleum products' means motor gasoline and liquid asphalt only."

This order of the court, adequately protects all of defendants' legitimate interests. Accordingly, defendants' motions to strike all references to "refined petroleum products" in Count I are Denied.

II. *Motions To Dismiss Count II—Parens Patriae*

Defendants assert that plaintiff has failed to state a cause of action as *parens patriae* on behalf of its citizens,

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[6] 32A Code Fed. Regs., OI Reg. 1, § 7(b) (1968), 31 Fed. Reg. 7745, 7747 (1966).

and move that Count II of the Third Amended Complaint be dismissed. Defendants argue that plaintiff can not prosecute the claims of its citizens, in the guise of *parens patriae,* since the State does not assert any interest apart from and independent of the alleged injury to its individual citizens. Defendants further contend that even if plaintiff has satisfied the requirements of a *parens patriae* complaint, its remedy is limited to whatever equitable sanctions may be available and it may not recover damages.

Plaintiff responds *in its brief and oral argument* that a state may sue *parens patriae* on behalf of a substantial portion of its citizens to vindicate an antitrust violation, which, because of its extensive nature, constitutes a public wrong. Plaintiff contends defendants' statewide pricing conspiracy discriminates against the Hawaiian consumers, thereby injuring the economic well-being of the State over and above the monetary injury to the individual consumers. Plaintiff maintains that all remedies appropriate under the antitrust laws, including that of treble damages, are available to the State of Hawaii in its capacity as *parens patriae.* The following, however, is the totality of plaintiff's *parens patriae* allegations in its complaint:

> "18. The above-named plaintiff, acting in its capacity as *parens patriae,* and/or as trustee for the use of its citizens who purchased refined petroleum products, from any defendant or co-conspirator herein, realleges the matters set out in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Count One herein with the same force and effect as though the allegations of each of said paragraphs were set forth in full herein.

"19. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize, and monopolization have resulted in the plaintiff, through its respective departments, institutions, agents, etc. and in its citizens, paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage to itself and its citizens, however, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein."

None of the numbered paragraphs, incorporated by reference, deals with *parens patriae*.

In *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439 (1945), the Supreme Court upheld the right of a state to sue *parens patriae* for redress from antitrust violations in the setting of rail freight rates. The Court discussed the prior law, summarizing and codifying the requirements for a *parens patriae* suit:

> "[T]he interests of the State are not confined to those which are proprietary; they embrace the so-called 'quasi-sovereign' interests which in the words of *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237, are 'independent of and behind the titles of its citizens. . . .'
>
> "It seems to us clear that under the authority of these cases Georgia may maintain this suit as *parens patriae* acting on behalf of her citizens. . . .
>
> "If the allegations of the bill are taken as true, the economy of Georgia and the welfare of her citizens have seriously suffered as the result of this alleged conspiracy. Discriminatory rates are but one form of trade barriers. . . . They may affect the prosperity and welfare of a State as profoundly as

> any diversion of waters from the rivers. They may arrest the development of a State or put it at a decided disadvantage in competitive markets. . . . Georgia as a representative of the public is complaining of a wrong which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate." 324 U.S. at 447-51.

Plaintiff has referred to various factors enumerated in *Georgia* in its written and oral argument, but those factors are nowhere indicated or suggested in the allegations of the complaint. Plaintiff has not even alleged an interest in its citizens' claims, much less interest of its own aside from the State's proprietary rights. Thus, plaintiff's Count II totally fails to satisfy the *Georgia* requirements. While in this era of "sketch" pleading, a complaint usually need do no more than summarily apprise defendant of the basis of plaintiff's claims, Count II is deficient even by this liberal standard, and the court can not incorporate plaintiff's argument into its pleading.

This court does *not* here decide that plaintiff could or could not properly plead an action for money damages as *parens patriae,* in these circumstances, or that any sanctions might here be available under such theory. Rather, this court merely says that the allegations set forth in Count II of plaintiff's Third Amended Complaint are insufficient to withstand defendants' motions to dismiss. Accordingly, defendants' motions are Granted, without prejudice to plaintiff to amend its complaint.

III. *Motion To Dismiss Count III—Class Action*

Count III pleads a class action by the State as the representative of its citizens who purchased refined petroleum products. Taking into consideration the context of plaintiff's oral argument on Count II, this court views Count III as overlapping, parallel and/or alternative to the Count II *parens patriae* count dismissed above. Accordingly, the court will withhold ruling on defendants' motions to dismiss Count III until plaintiff has had an opportunity to consider amending its complaint. If an amended complaint is filed, the court will rule on any class action allegations, if any are then before it, in conjunction with any ruling which may be made on motions related to the amended complaint. Plaintiff is granted fifteen (15) days from the filing of this decision within which to file an amended complaint, if plaintiff so desires, but if such is not filed, a ruling on the present Count III will be forthcoming immediately thereafter.

This memorandum decision constitutes the ORDER of the court in the particulars set forth above.

DATED: Honolulu, Hawaii, this 24th day of February, 1969.

/s/ Martin Pence
United States District Judge

[Feb. 27, 1969]

[Title omitted in printing]

FOURTH AMENDED COMPLAINT

(Sherman Anti-trust Act)

(Jury Demanded)

The above-named plaintiff files this complaint against the above-named defendants and, demanding trial by jury, complains and alleges as follows:

COUNT ONE

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the named defendants under Sections 4 and 16 of the Clayton Act (15 U.S.C. 12, 26), to secure damages from, and injunctive relief against, the named defendants for violations of the antitrust laws as hereinafter alleged.

2. Each defendant maintains an office, transacts business, and is found within the District of Hawaii, and is within the jurisdiction of the Court for the purposes of service.

II

The Parties

3. The State of Hawaii is one of the sovereign states which through its various departments, agencies, institutions, universities and boards has been a substantial purchaser of refined petroleum products, including without limitation, motor gasoline and asphalt.

4. Standard Oil Company of California (hereinafter, Standard), a Delaware corporation, with its principal

offices located in San Francisco, California, hereby is named a defendant herein.

5. Chevron Asphalt Company (hereafter, Chevron), a Delaware corporation, with its principal offices in San Francisco, California, a wholly-owned subsidiary of Standard Oil Company of California, hereby is named a defendant herein.

6. Union Oil Company of California (hereafter, Union), a California corporation, with its principal offices located in Los Angeles, California, hereby is named a defendant herein.

7. Shell Oil Company (hereafter, Shell) a Delaware corporation, with its principal offices located in New York, New York, hereby is named a defendant herein.

III

Co-conspirators

8. Other persons, firms or corporations participated as co-conspirators in violation of the antitrust laws hereinafter alleged.

IV

Nature of Trade and Commerce

9. Each of the defendants is an integrated oil company engaged in the business of purchasing and producing crude oil, transporting crude oil and refined petroleum products, refining crude into refined petroleum products and in the wholesale and retail sale of refined petroleum products.

10. The only commercial oil refinery in the State of Hawaii is owned by defendant Standard. Substantially all of the crude oil refined at said refinery is imported into

Hawaii, under applicable Federal regulations, primarily from Far Eastern countries.

11. The refined petroleum products, including motor gasoline, produced at said refinery are distributed by defendant through service station and other outlets most of which are operated by lessee dealers. Some refined petroleum products are sold by Standard and/or Chevron directly to Federal, State and Municipal government agencies. Substantial quantities of motor gasoline are shipped from the Hawaii refinery to the mainland for sale and distribution there. Finally, Standard supplies refined petroleum products to the other defendants and other major integrated oil companies for their resale and/or distribution in Hawaii.

12. Each of the defendants ships refined petroleum products, including motor gasoline, from the mainland to Hawaii for resale and/or further distribution in Hawaii or elsewhere.

13. Motor gasoline represents approximately 90% (in terms of dollar value) of the refined petroleum products sold by each defendant through service stations. By means of various provisions in their leases, subleases and supply contracts with service station operators, and in other ways, each defendant has been able to and does dominate and control the manner in which independent service station operators conduct their respective businesses. Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as the type, quality and

brands of automotive accessories and miscellaneous merchandise and the price thereof which the dealer handles and sells and many other details of the dealers' business affairs. Each defendant compels and controls dealer participation in regional, national and local promotional programs such as the giving of stamps, steak knives, glasses and game tickets. This domination and control over the dealers is enforced by each defendant through a system of policing which subjects the dealer to inspection, surveillance and harassment by dealer representatives and others.

14. During the period covered by this amended complaint there has been a continuous and regular flow in foreign commerce of crude oil obtained from sources outside the State of Hawaii through the Standard refinery in Hawaii producing motor gasoline and other refined petroleum products sold to service stations and others in Hawaii and on the mainland.

V

Offenses Charged

15. Beginning at a time unknown to plaintiff, and continuing thereafter up to and including the date hereof, defendants entered into unlawful contracts, and a combination and conspiracy in unreasonable restraint of trade and commerce in the sale, marketing and distribution of refined petroleum products and said defendants have combined and conspired as herein set forth to monopolize, and said defendants have monopolized such trade and commerce in violations of Sections 1 and 2 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U.S.C. Sections 1 and 2).

16. The aforesaid contracts, combination and conspiracy to restrain trade and commerce, and the combination and conspiracy to monopolize and the monopolization of such trade and commerce, have consisted of a continuing agreement and concert of action between defendants the substantial terms, purposes and intent of which have been that said defendants and the co-conspirators:

(a) agreed to fix, stabilize and establish unreasonably high wholesale and resale prices on motor gasoline and other refined petroleum products;

(b) agreed to maintain and enforce resale prices on motor gasoline;

(c) agreed to fix, stabilize and establish unreasonably high prices for liquid asphalt;

(d) agreed to rig bids on the sale of motor gasoline, liquid asphalt and other refined petroleum products to the State of Hawaii, its political subdivisions, or to contractors submitting bids to the State and its political subdivisions;

(e) agreed to restrict the number of refiners of crude oil in Hawaii;

(f) agreed to exchange import quotas for foreign crude and to exchange refined petroleum products among themselves in order to: (i) exclude actual and/or potential competitors, and (ii) maintain high, arbitrary prices;

(g) agreed to price refined petroleum products in Hawaii on the basis of posted crude oil prices on the mainland even though most of the refined petroleum products sold in Hawaii are produced from lower priced foreign crude oil.

VI

Injury To Plaintiff

17. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination, and conspiracy to monopolize, and monopolization have resulted in the plaintiff, through its respective departments, institutions, agencies, etc., paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage. However, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

COUNT TWO

18. The facts alleged in paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Count One are realleged with the same force and effect as though the allegations of each of said paragraphs were set forth in full herein.

19. The State of Hawaii, acting through its Attorney General, brings this action by virtue of its duty to protect the general welfare of the State and its citizens, acting herein as *parens patriae,* trustee, guardian and representative of its citizens, to recover damages for, and secure injunctive relief against, the violations of the antitrust laws hereinbefore alleged.

20. The unlawful contracts, combination and conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize and monopolization, hereinbefore alleged, have injured and adversely affected the economy and prosperity of the State of Hawaii in, among others, the following ways:

(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;

(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;

(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;

(d) the full and complete utilization of the natural wealth of the State has been prevented;

(e) the high cost of manufacture in Hawaii has precluded goods made there from equal competitive access with those of other States to the national market;

(f) measures taken by the State to promote the general progress and welfare of its people have been frustrated;

(g) the Hawaii economy has been held in a state of arrested development.

21. Plaintiff has not yet ascertained the precise extent of said damage to itself and its citizens; however, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

COUNT THREE

22. The above-named plaintiff, acting on its own behalf and on behalf of its citizens who purchased refined petroleum products from any or all of the above-named defendants or co-conspirators, brings this action individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure, as amended, as the representative of the aforesaid class, to obtain damages from, and equitable

relief against, the above-named defendants; and so doing, plaintiff realleges the matters set out in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Count One herein with the same force and effect as though the allegations of each of said paragraphs were set forth in full herein.

23. The nature of the offenses charged, commerce involved, and relief sought present substantial questions of both law and facts common to the named plaintiff and to all of the members of the class. Because of the large number of citizens of the State of Hawaii who have purchased motor gasoline and other refined petroleum products from the named defendants and/or their retail dealers and other co-conspirators and because of the expense and burden to the parties and to the Court of litigating their claims separately, it is impracticable to bring them all before the Court. The named plaintiff, however, fairly insures the adequate representation of the interests of the entire class.

24. The unlawful contracts, combination, conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize, and monopolization have resulted in the plaintiff, through its respective departments, institutions, agencies, etc., and in its citizens, paying more for refined petroleum products than would have been paid in a freely operating competitive market. Plaintiff has not yet ascertained the precise extent of said damage to itself and its citizens; however, when said amount has been ascertained, plaintiff will ask leave of Court to insert said sum herein.

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants (a) have combined in restraint of trade and

commerce hereinbefore described; (b) have combined to monopolize; (c) actually have monopolized the trade as hereinbefore described in violation of Sections 1 and 2 of the Sherman Act;

2. That plaintiff recover its damages, which, when ascertained, be trebled as required by Section 4 of the Clayton Act;

3. That plaintiff recover, as trustee or as representative of the above-pleaded class, the damages sustained by its citizens, which, when ascertained, be trebled as required by Section 4 of the Clayton Act;

4. That defendants and each of them be enjoined from continuing their unlawful conduct;

5. That plaintiff be awarded reasonable attorneys' fees as provided by Section 4 of the Clayton Act; and

6. That plaintiff recover the costs of litigation as provided by Section 4 of the Clayton Act.

Dated: February 27, 1969

STATE OF HAWAII
By Bert T. Kobayashi
Attorney General

Gilbert K. Hara
Patricia Kim Park
Joseph Kinoshita
Deputy Attorneys General

Joseph L. Alioto
Maxwell M. Blecher
Francis O. Scarpulla
By /s/ Maxwell M. Blecher

[Certificate of mailing omitted in printing]

[March 19, 1969]

[Title omitted in printing]

STIPULATION

It is hereby stipulated by and between the parties hereto:

1. that the motions heretofore addressed to Counts Two and Three of the Third Amended Complaint be deemed to be addressed to the Fourth Amended Complaint;

2. that defendants shall serve and file any further memoranda of points and authorities with respect to the Fourth Amended Complaint on or before April 18, 1969; and

3. plaintiff shall serve and file any responsive memorandum on or before May 12, 1969.

Pillsbury, Madison & Sutro
Francis R. Kirkham
Richard J. MacLaury
James F. Kirkham
Pratt, Moore, Bortz & Case
Daniel H. Case
Roy A. Vitousek, Jr.
By /s/ Richard J. MacLaury
Attorneys for Defendants Standard Oil Company of California and Chevron Asphalt Company.

Brobeck, Phleger & Harrison
Moses Lasky
Malcolm T. Dungan
By /s/ Malcolm T. Dungan
Attorneys for Union Oil Company of California

Howrey, Simon, Baker & Murchison
William Simon
Richard T. Colman
By /s/ Richard T. Colman
Attorneys for Shell Oil Company

Joseph L. Alioto
Maxwell M. Blecher
Francis O. Scarpulla
By /s/ Maxwell M. Blecher
Attorneys for Plaintiff

It is so *ORDERED* this 19th day of March, 1969.

/s/ Martin Pence
Judge of the United States District Court

[Certificate of service omitted in printing]

EXCERPTS FROM REPORTER'S TRANSCRIPT DATED MAY 29, 1969

(Rep.Tr. p. 74, lines 16-25):

[Mr. Blecher] Count II of the proposed complaint alleges a *parens patriae* claim. A *parens patriae* claim alters nothing in the context of the interest of the jurors or the Court. The *parens patriae* claim, if, as we respectfully submit it should be, it is sustained by this Court does no more than increase the prospective monetary recovery to the State. It adds no new parties. It changes no substantial issues.

So far as the class action is concerned, should the Court elect, either duplicatively, partially duplicatively or alternatively, the *parens patriae* sustains the class action. **[R.T. 74]**

(Rep.Tr. p. 85, line 22 through p. 86, line 12):

[Mr. Lasky] But let us turn exactly to the argument he makes in trying to support his *parens patriae* argument, and I can sum it up in about two seconds, it is, shall these wrongdoers, Shell, Union and Standard, who have wrongfully extracted from **[R.T. 85]** the pockets of the people, every citizen of this State, $14 million go unwhipped of justice and be permitted to keep that loot in their pockets? No, says he, your Honor shall create a new rule of law and take that loot which we have extracted from the people—from you and you and you in Hawaii—and put it in the treasury of this State where it will end redound to everybody's benefit.

The Court: That isn't *parens patriae* as I read it, though, Mr. Lasky.

Mr. Lasky: No, your Honor, and that's what we shall say when, as, and if we argue the *parens patriae* point, but it is what he claims is *parens patriae.* [R.T. 86] (Rep.Tr. p. 95, lines 4-17):

Mr. Simon: But most of them are not accurate. I give you one example, and this is a typical example. He said that we buy our gasoline from Standard. Now, this is not true. We do not buy any gasoline from Standard. It is true that some of the gasoline that Shell sells in the islands—not more than half—comes from the Standard refinery. But we don't buy it from them; we exchange it from them. And there's a big difference, your Honor, because, for every gallon of gasoline we give them, they give us here. We give them a gallon of gasoline in the California area, and that gasoline costs us what California gasoline costs us. So, it isn't a question of buying it from them here; it's a question of giving them in exchange a gallon of gasoline. There's a real difference. [R.T. 95] (Rep.Tr. p. 103, lines 9-18):

[The Court] We next come to the matter of *parens patriae—parens patriae* as pleaded, not as argued but as pleaded. This will come up perhaps later. As pleaded, it gives me no more interest in the outcome of the case than I would have if both Counts II and III were out. Count III must be couched under *parens patriae* on the basis of an economic injury to the entire State. It is not couched, as I read it, upon the individual losses of any user of gasoline. It is the economy of the State which must be injured; not the personal loss of any one individual. [R.T. 103]

(Rep.Tr. p. 104, lines 10-17):

In the event that Count III is allowed to remain, we might and may have a different problem. As to Count II, *parens patriae*, if that were to remain, there is no problem —no problem with any juror anymore than there would be any problem, as I've indicated to you, with the judge, because *parens patriae* is couched on the injury to the total economy of the State. It's not upon the individual economy or financial pocketbook or loss of any particular individual. **[R.T. 104]**

(Rep.Tr. p. 121, line 3 through p. 123, line 18):

[Mr. Kirkham] Now, I want to close with one thought that really the only argument that has been made by Mr. Blecher on this from beginning to end is the argument that Mr. Lasky, rather emotionally and much better than I could, summed up a moment ago, "Is this Court going to let these companies take a lot of money away from these poor people without giving them a remedy."

Well, the remedies that the Sherman Act has provided and the remedies that have been developed in the development of our law for 75 years have, I think, not been too ineffective. I don't want to be facetious but I've been an opponent of Mr. Blecher in enough cases to think that there certainly are remedies available.

I know of 15 or 20 suits pending, and I'm a little bit hesitant to say this and I don't want to but I will, against the oil industry throughout the United States and many of them are class actions. There are actions pending in the East that involve the public bodies of the States of Delaware, New Jersey and Pennsylvania. There are actions

pending on the West Coast—Mr. Blecher is connected with that—that are class actions.

There is no problem of remedy here. The class action provides a remedy if it's an appropriate class action. [R.T. 121]

Now, in this case, the plaintiff at the very beginning started out and said. I want every citizen who has purchased refined petroleum products in the State of Hawaii to be brought in here as a class. Now, he hasn't receded from that one inch, although our position has been, as stated by Mr. MacLaury at the outset, that we are objecting to that class. We are not saying that a proper class cannot be named in this suit and more particularly, perhaps, in another suit, and it would avoid the problem that Mr. Simon raises with respect to the status of the State as an individual of its own and not representative of any class.

But there is no question at all but what an appropriate class action can be brought. And what has happened here is, as I say, Mr. Blecher started out with that one class action; he hasn't receded from it. He started out with the *parens patriae* action to go as a parallel to it so the Attorney General will recover all this money, and he has completely ignored the fact that remedies are open under the law, adequate remedies under the law, that completely obliterate the imaginary horrible that he sees. He doesn't have to sue on behalf of every citizen of Hawaii that makes a completely impossible class. And if, some of the efforts that have gone in our battling these matters before your Court, your Honor had gone into taking a look at what the facts are and seen which ones

of these people belong to a class and which ones [R.T. 122] have like problems, then the law supplies a remedy, and you don't have to stretch and distort a unique and very special remedy like *parens patriae* in order to reach something that the law already gives him a chance to reach.

I believe I said earlier, I don't even think it presents a substantial question to ask this Court to make every citizen of Hawaii that has bought refined petroleum products a member of the class, and the many, many, many, many reasons for that have been set out in the arguments that have gone on before this. It's on an analogy of the Supreme Court of the United States refusing to take jurisdiction of a State Court when there isn't a substantial Federal question involved. It goes to the jurisdiction.

I don't think a substantial question is presented, but I urge, and strongly urge, and this Court, certainly with its vast antitrust experience, realizes instinctively that there are remedies that are available and a little bit of effort can get that remedy. [R.T. 123]

(Rep. Tr. p. 129, line 21 through p. 131, line 10):

The Court: I know what was the issue there but I'm taking the broad context of what was said to the Court. You tell me now how you would react to the argument, which undoubtedly would come, what were they referring to there but "the business of the State, the economy of the State, the [R.T. 129] property of the State, the intangibles."

Mr. Simon: Of course, the economy of the State is quite a different matter than the business of the State.

What was involved in Georgia was the claim that factories would not locate in Georgia because of the discriminatory freight rates which favored Northern locations.

The Court: So the State was thereby injured because it couldn't make the mine, the factories couldn't develop, they couldn't get their taxes, and so on. Am I wrong?

Mr. Simon: You don't collect taxes, of course, from nonexistent factories. On the other hand . . . .

The Court: Presupposing you were able to show the "but for"?

Mr. Simon: But for the economy of the State, your Honor, might have been affected; but the business of the State, the property of the State would not. The economy of the State is the standard of living of its people. The level of the economy, the gross income, or the gross national product, the gross State product, this is . . . .

The Court: And that's reflected how?

Mr. Simon: This is reflected by . . . .

The Court: By taxes.

Mr. Simon: That's one factor. The gross product of the State is another factor. The standard of living of the people is another factor. The average income of the people [R.T. 130] is another factor. But these aren't factors that are damage to the business or property of the State. They are factors which, in Georgia, the Supreme Court said the State could protect because there was no one else to protect them. The nonexistent factory couldn't claim damages because he hadn't built the factory, and what Georgia was seeking to do was to eliminate discriminatory rates that would bring new factories to the State. But there is nothing in that opinion and your Honor will recall that in the brief the Attorney General

of Georgia admitted that they couldn't collect money damages. [R.T. 131]

(Rep. Tr. p. 149, line 13 through p. 156, line 18):

The Court: Well, we have all had plenty of opportunity to decide whether *parens patriae* is a proper count in this case. I have studied the problem, aided and abetted by the very, very great educational argument presented both in writing and orally by all counsel here.

I take into consideration the words of Justice Holmes just quoted and hope what I have concluded indicates that I have an ability to read English intelligently.

Were it not for the words of Justice Douglas in that divided-Court decision in Georgia versus Pennsylvania Railroad, the problem would be simple, because, going down through the cases that have touched upon *parens patriae* and its use in the field of law, it only involved equitable relief. [R.T. 149]

It was only basically, in Georgia versus Pennsylvania Railroad and some of the words perhaps in North Dakota versus Minnesota, and, if you want to look at it backwards, perhaps Oklahoma versus American Book, you'll find any inferences that *parens patriae* would be a proper count in a Sherman 1 action for damages, I mean, injury to business or property.

The amended bill of complaint in Georgia versus Pennsylvania asserted four counts of injury. The third and fourth, as you well know from having poured over this one yourself, sought treble damages for alleged discriminatory freight rates charged the State and its citizens. Now, in its supporting brief, as you correctly pointed out, Mr. Kirkham, page 8, the State of Georgia indicated it was not primarily interested in seeking damages for past

injuries to the State and its citizens, but is primarily interested in the future welfare of the State and its people.

It appeared to me, as I read this, these Delphic words of the Supreme Court, it appeared to me that the Court held that Georgia had properly asserted a cause of action for both injunctive and damage relief as *parens patriae* as well as proprietary—that's the way I read it—and permitted the bill of complaint involving the Court's jurisdiction to be filed.

These words, which all of you have had a chance to **[R.T. 150]** read and analyze, Mr. Blecher said they mean this and counsel urge they mean that. I'm the man looking at them from the middle and this is what the Court said. You've heard it and you've read it. I'm going to repeat it for my own benefit as well as yours.

"Georgia, suing for her own injuries, is a 'person' within the meaning of Section 16 of the Clayton Act; she is authorized to maintain suits to restrain violations of the anti-trust laws or to recover damages by reason thereof. But Georgia is not confined to suits designed to protect only her proprietary interests. The rights which Georgia asserts, *parens patriae,* are those arising from an alleged conspiracy [which] injured the economy of Georgia."

I'm jumping along, "when it came to other sanctions Congress * * * authorized civil suits not only by the United States but by other persons as well. And we find no indication that, when Congress fashioned those civil remedies," these are my own mental underscorings, "it restricted the States to suits to protect their proprietary interests. Suits by a State, *parens patriae,* have long been recognized. There is no apparent reason why

those suits should be excluded from the purview of the anti-trust acts."

Now, is it to be narrowed to say that purview of the injunctive provisions of the antitrust acts? Should that be insterted there, because all of the other cases covered only [R.T. 151] injunction, and naturally that was all that Georgia finally decided that it wanted here. Was that what the Court was saying?

And the Court continues on page 452:

"Since the claim which Georgia asserts as *parens patriae* as well as proprietor meets the standards of justiciability and since Georgia is a 'person' entitled to enforce the civil *sanctions,*" that's my underscoring, "the civil sanctions," albeit plural rather than singular, but it's there, "of the anti-trust laws, the reasons which have been advanced for denying Georgia the opportunity to present her cause of action to this Court fail."

I don't think I need to go into Keogh versus Chicago and how that limited the recovery and so forth.

One might argue that the State of Oklahoma versus American Book Company in 144 F.2d 585 is not to the contrary. I will not go into that. I'm forced to write a decision in this case. It is never my desire and I always reluctantly undertake a "monumental decision." I remember my first monumental decision. The Supreme Court reversed me. They may do so in this.

Because of the hour and because this is a ruling which will demand a fuller implementation, I will simply rule at this time:

As I read Georgia versus Pennsylvania Railroad, I [R.T. 152] can conceive that there can be such a damage to the economy of a State apart from its strictly proprietary loss, but a damage to the economy which is

susceptible to proof and translatable into money, dollars, cash.

And, when I read, as you did, too, "the economy of Georgia and the welfare of her citizens have seriously suffered as the result of this alleged conspiracy. Discriminatory rates are but one form of trade barriers. They may cause a blight no less serious than the spread of noxious gas over the land," which, of course, would be destructive, "or the deposit of sewage in the streams," which might, again, be destructive to the over-all economy of the State. "They may stifle, impede, or cripple old industries and prevent the establishment of new ones. They may arrest the development of a State or put it at a decided disadvantage in competitive markets."

I can conceive that it would be possible, under Bigelow, at least, to offer some basis of proof which could establish a damage translated in dollars to a State because of the alleged conspiracy to the entire economy of the State, I mean, the alleged conspiracy and effect to the entire economy of the State.

So, I will rule that the *parens patriae,* as pled, is not subject to dismissal because it pleads a good cause of action in the context of this case here. **[R.T. 153]**

Now, I'm going to . . . . As I say, I'll have to write this. Don't expect it tomorrow. Insofar as the class action, you don't need to argue, not because I rule this way because I was ready to rule there in San Francisco on the class action.

Judge Harris is an able Judge, conceivably much more able than I. When he wrote the Chicken Delight case, he said what he thought a judge could do. As I see the present pleadings and pleadings in the proprietary capacity, there are two factors. Either the State is plead-

ing in the proprietary capacity as a wholesale buyer, or buyer of wholesale, or is pleading as a buyer of retail.

Now, we know that when it buys at retail, say, over on the island of Molokai—somebody found it easier to go to a service station and spend the State's money to buy gasoline—now, if they say that because that took place that we are now ready to take on and give the Court the horrendous problem of every last one of the individuals throughout the State, or whoever were here during that period, who purchased gasoline at retail, and take on the burden of determining how much each and every one should ultimately be entitled to who finally came in under the class, I state that I see so many, many problems—those who have been here and gone; those who bought 5¢ or $50 or $39.70, whatever it might be over a period. Even if you were able to say that, well, everyone of them had a credit card, which is not true, we know, [R.T. 154] so all we'd have to do is grab the records of these various companies, and just take all the credit card listings, and so forth, gentlemen, even if it were that way, I would hold that, under the circumstances right now, the class action based upon the injury to every individual purchaser of gasoline in the State, to me at the present time, in the context of the pleadings, would be unmanageable.

I'm not prepared at this time to go ahead with the class action as counsel has pled it because I feel that it would be unmanageable under the present context of the case.

The motion to dismiss Count III is granted, without prejudice, however. If you can come up sometime later with something that the Court feels that the Court can manage, we'll reconsider it.

Now, it's 4:10. We'll take a five-minute recess and I think we can dispose of the other matter in not too long a time and get through this afternoon.

(The proceedings recessed at 4:12 P.M. and reconvened at 4:23 P.M., May 29, 1969.)

Mr. Kirkham: May it please the Court, in the argument of Mr. Laskey's, he recognized that he misspoke himself as to the ruling and did say that he thought it was an appropriate case for certification.

The Court: I had just informed my legal eagles here that, if the motion for certification were again urged, **[R.T. 155]** that I probably would feel it was in order.

Mr. Kirkham: Thank you, your Honor.

The Court: And since now this statement allows me to take up the one that I passed, inasmuch as we're going to have certification of one problem, you might as well have certification of two. I think they can both be disposed of at the same time. So, the motion for certification under 1292(b), the motion for change of venue, is granted; the motion for certification under the same section for a *parens patriae* count is likewise granted. Counsel will prepare the necessary orders and I'll sign the same.

Now, do you want certification of your class action?

Mr. Blecher: No, your Honor. I simply want to inquire so our records are right. I think 1292(b) requires that, within ten days from the entry of the order from which certification is taken, the matter will be taken up with the Court of Appeals and a petition can be presented to the Court of Appeals. Is that time running from the order today? **[R.T. 156]**

[July 1, 1969]

In the United States District Court
for the District of Hawaii

Civil No. 2826

State of Hawaii, Plaintiff,

vs.

Standard Oil Company of California,
Union Oil Company of California,
Shell Oil Company, and
Chevron Asphalt Company,
Defendants.

DECISION ON PLAINTIFF'S PARENS PATRIAE COUNT

The State of Hawaii brought this antitrust action against three oil companies and a subsidiary of one, alleging in Count I of its Fourth Amended Complaint, basically, that the defendants violated Sherman 1 and 2 by bid rigging, price fixing, market monopolization, and other acts in restraint of trade, and asks for damages based upon the illegal excess prices paid for defendants' products by the State in its proprietary capacity, as a buyer of petroleum products.

In Count II the State "brings this action by virtue of its duty to protect the general welfare of the State and its citizens, acting herein as *parens patriae*, trustee, guardian, and representative of its citizens, to recover damages for, and secure injunctive relief against, the

violations of the antitrust laws hereinbefore alleged."[1] Plaintiff continues to allege that the combination and conspiracy of the defendants in restraint of trade and to monopolize the sale, marketing and distribution of refined petroleum products has "injured and adversely affected the economy and prosperity of the State of Hawaii" by:

"(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;

"(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;

"(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;

"(d) the full and complete utilization of the natural wealth of the State has been prevented;

"(e) the high cost of manufacture in Hawaii has precluded goods made there from equal competitive access with those of other States to the national market;

"(f) measures taken by the State to promote the general progress and welfare of its people have been frustrated;

"(g) the Hawaii economy has been held in a state of arrested development."[2]

Plaintiff then alleges it "has not yet ascertained the precise extent of said damage to itself and its citizens"; but asked leave to insert such sum when ascertained.[3]

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[1]Fourth Amended Complaint, Paragraph 19.

[2]Fourth Amended Complaint, Paragraph 20.

[3]Plaintiff's Count III pled a class action. Defendants' motion to dismiss this count was granted in an oral bench decision, after briefing and argument.

Defendants moved to dismiss Count II—maintaining (a) "there can never be a *parens patriae* suit for damages; such a suit lies only in equity, and only for preventive relief;" (b) "Count II does not in fact allege any injury to the general economy of the State of Hawaii, or to Hawaii in its sovereign or quasi-sovereign capacity, that would support a *parens patriae* injunction;" (c) a *parens patriae* suit for damages is not maintainable under Section 4 of the Clayton Act which permits damages only to business and property, arguing that damages to a state's business or property are by definition and nature not damages to its sovereignty or quasi-sovereignty; (d) if dollar damages to the economy of the State were measured by the harm done to the individual inhabitants, there would be created the risk of double recovery, inasmuch as each of the State's inhabitants, in theory at least, would be entitled to sue for any direct damage to his own business or property; and (e) a *parens patriae* suit for damages under the antitrust laws will not lie because an injury to the state's sovereignty is by its very nature too remote or speculative to be measurable in money damages.

The problem has been twice fully briefed and argued by all parties.[4]

The concept of a *parens patriae* count in an antitrust action of the nature of the present one, emanates from

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[4]In plaintiff's Third Amended Complaint, the allegations of Count II flirted with the theory of a *parens patriae* claim, and on defendants' motion to dismiss, it was briefed by both plaintiff and defendants as if it had been properly alleged. This court in a prior Memorandum Decision found that a *parens patriae* claim had not been pleaded and dismissed the count with leave to amend. Thus, all parties were given two shots at the same target.

Georgia v. Pennsylvania R. Co., 324 U.S. 439 (1945), where the Supreme Court granted the State of Georgia's motion to file an amended complaint which alleged and sought relief from an antitrust violation by twenty railroad companies. The amended complaint asserted four counts of injury, the Third and Fourth of which sought treble damages for the alleged discriminatory freight rates charged the State and its citizens.[5] The Supreme Court held that Georgia had properly asserted a cause of action for injunctive and *damage* relief as *parens patriae* as well as proprietor, and permitted the complaint involving the Court's original jurisdiction to be filed. The Court stated:

> "Georgia, suing for her own injuries, is a 'person' within the meaning of § 16 of the Clayton Act; she is authorized to maintain suits to restrain violations of the anti-trust laws or to recover damages by reason thereof. . . . *But Georgia is not confined to suits designed to protect only her proprietary interests.* The rights which Georgia asserts, *parens patriae*, are those arising from an alleged conspiracy [which] . . . injured the economy of Georgia. . . . When it came to other *sanctions* Congress . . . authorized civil suits not only by the United States but by other persons as well. And we find no indication that, when Congress fashioned those civil *remedies*, it restricted the States to suits to protect their proprietary interests. Suits by a State, *parens patriae*, have long been recognized. *There is no apparent reason why those suits should be excluded from the*

[5] In its supporting brief (page 8) the State of Georgia indicated that it was "not primarily interested in seeking damages for past injuries to the State and her citizens, . . . [but in] the future welfare of the State and her people."

purview of the anti-trust acts." 324 U.S. at 447. (Emphasis added.)

"Since the claim which Georgia asserts as *parens patriae* as well as proprietor meets the standards of justiciability and since Georgia is a 'person' entitled to enforce the civil *sanctions* of the anti-trust laws, the reasons which have been advanced for denying Georgia the opportunity to present her cause of action to this Court fail." 324 U.S. at 452. (Emphasis added.)

After allowing the State of Georgia to file its complaint seeking both equitable and legal relief and stating that all civil antitrust sanctions are available to the State in both its proprietary and *parens patriae* capacities, the Court ruled that damages based on the allegedly excessive freight rates would not be permissible, solely because they had been approved by the ICC and were therefore "legal" rates.[6] This is the only case which either counsel or the court has uncovered which lends precedential support to the claim that a state may recover money damages, trebled, in an antitrust action under the aegis of a *parens patriae* claim.

There are many cases, however, which have passed upon the primary problem of whether a state has sufficient interest in a controversy to be entitled to sue as *parens patriae*. In the determination of the state's standing to sue, each case poses a question of law which can be determined only by an analysis of the particular facts concerned. Generally it has been the Supreme Court which has determined whether a state has properly stated

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[6]See *Keogh v. Chicago & N.W.R. Co.*, 260 U.S. 156 (1922) and *Marnell v. United Parcel Service*, 260 F.Supp. 391, 406 (N.D. Cal. 1966).

a claim as *parens patriae*. This is because of the Court's original jurisdiction over controversies between states or between a state and citizens of another state. In passing upon the appropriateness of a *parens patriae* claim, the Supreme Court acted in its capacity as a finder of fact, thus performing a function usually undertaken by a lower tribunal. In *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 238 (1907), the Supreme Court permitted the State of Georgia to sue to enjoin fumes from a copper plant across the state border from injuring land in five (5) Georgia counties, very little of which was owned by the State, stating:

> ". . . [W]e are satisfied by a *preponderance of evidence* that the sulphurous fumes cause and threaten damage on so considerable a scale to the forests and vegetable life, if not to health, within the plaintiff State as to make out a case [parens patriae]. . . ." (Emphasis added.)

Based on its view of the facts, the Supreme Court has entertained suits *parens patriae* to (a) restrain diversion of water from an interstate stream, *Kansas v. Colorado*, 206 U.S. 46, 95-96 (1907); (b) enjoin changes in drainage which increase the flow of water in an interstate stream, *North Dakota v. Minnesota*, 263 U.S. 365, 374 (1923); (c) preclude restraints on the commercial flow of natural gas, *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923); and (d) restrain the discharge of sewage into the Mississippi River and New York Bay, *Missouri v. Illinois and Chicago District*, 180 U.S. 208 (1901) and *New York v. New Jersey*, 256 U.S. 296 (1921). See also *Pennsylvania v. West Virginia, supra* at 592, where the Supreme Court, after finding a sufficient basis for a suit *parens patriae*,

distinguished certain prior opinions on the ground that "*the facts on which they turned,* as the opinions show, were so widely different from those here that they are not in point." (Emphasis added.)

Conversely, the Supreme Court has rejected the propriety of suits *parens patriae* to (a) enforce claims of a bank's creditors and depositors, *Oklahoma v. Cook,* 304 U.S. 387 (1938); (b) collect claims against another state, which claims, prior to assignment, belonged to citizens of the prosecuting state, *New Hampshire v. Louisiana,* 108 U.S. 76 (1883); (c) recover for injury allegedly resulting from unlawful freight rates charged its citizen-shippers, *Oklahoma v. A.T. & Santa Fe RR.,* 220 U.S. 277 (1911); and (d) enjoin alleged interference with interstate commerce resulting from state quarantine regulations, *Louisiana v. Texas,* 176 U.S. 1 (1900).

An analysis of the above cases indicates that if a state is to maintain an action in its *parens patriae* capacity, *initially* the facts must show that the state has an interest "independent of and behind the titles of its citizens," *Georgia v. Tennessee Copper Co., supra;* "has an interest apart from that of the individuals affected," *Pennsylvania v. West Virginia, supra;* "must show a direct interest of its own and not merely seek recovery for the benefit of individuals who are the real parties in interest," *Oklahoma v. Cook, supra;* "[it] must appear that the controversy to be determined is . . . not a controversy in the vindication of grievances of particular individuals," *Louisiana v. Texas, supra.* Thus the state's *parens patriae* claim cannot be a disguised attempt to recover damages on behalf of the state's individual citizen-

claimants. It is not a substitute for a class action under Rule 23, Fed. R. Civ. P. The two *theories for recovery* of damages are separate and distinct. (At this stage, we do not concern ourselves with the nature of proof.) So, here, the State in the guise of *parens patriae* cannot recover for the individual and several possible damage claims of its many citizen-consumers of petroleum products. As the preceding cases unmistakably set forth, and as the dissent in *Georgia v. Pennsylvania R. Co., supra,* points out:

> "The inhabitants of the State who have suffered injury or who are threatened with injury by the unlawful practices alleged . . . are alone entitled to seek a legal remedy for their injury, and are the proper parties plaintiff in any suit to enforce their rights which are alleged to have been infringed. It has long been settled by the decisions of this Court that a State is without standing to maintain suit for injuries sustained by its citizens and inhabitants for which they may sue in their own behalf." 324 U.S. at 473.

The cases also make manifest a *second prerequisite* which must be met before a state may sue in *parens patriae,* viz., the state has standing to sue in that capacity only if a substantial portion of the inhabitants of the state are adversely affected by the challenged acts of the defendants. For example:

> ". . . [T]he interests of the single industry here involved must be held to be private interests, not interests *affecting the whole economy* or *all the people of the state.* This type of interest is insufficient to give Minnesota the right to sue as parens patriae on behalf of all, or a *substantial number,* of

her citizens." *Land O'Lakes Creameries v. Louisiana*, 160 F.Supp. 387, 389. (Emphasis added.)[7]

"... [T]he mere fact that a State had no pecuniary interest in the controversy, would not defeat the original jurisdiction of this court, which might be invoked by the State as *parens patriae*, trustee, *guardian* or representative of *all or a considerable portion of its citizens* ...." *Kansas v. Colorado, supra*, at 99. (Emphasis added.)[8]

Thus, if a "substantial number", "or a considerable portion of [Hawaii] citizens" are adversely affected by the alleged acts of the defendants, Hawaii would have the requisite standing to sue as *parens patriae* on behalf of the totality of those citizens. While a state may not sue, *parens patriae*, for the recovery of possible individual damages or claims of its inhabitants, nevertheless if defendants' acts have a deleterious impact upon the general welfare or economy of the state, a state has standing to sue for both financial and injunctive relief in a *parens patriae* capacity.

As was conceded by counsel and as this court would judicially notice, there are almost 300,000 motor vehicles operating in this state with approximately 800,000 inhabitants. If more facts were needed, in this State where the grass never ceases to grow, gasoline-powered lawn mowers are as thick as the proverbial fleas on a dog. These two categories, of course, do not cover all of the engines in Hawaii that are powered by petroleum prod-

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[7]See also *Jones, Governor ex rel. Louisiana v. Bowles*, 322 U.S. 707 (1944).

[8]See also *Kansas v. Colorado*, 185 U.S. 125, 142 (1902) and *Missouri v. Illinois & Chicago District, supra*, at 241.

ucts. The court would judicially notice that there is probably not a single industry nor more than an insignificant number of persons in Hawaii whose operations, life and livelihood are not connected in some way with, or affected by, the use of gasoline fuel and the other petroleum products referred to in the present complaint, and perforce therefore, the cost thereof.

Hawaii meets each of the two primary requirements for a valid *parens patriae* cause of action and may maintain this suit as *parens patriae*, acting on behalf of her citizens.[9]

There is no merit in defendants' claim that there can never be a *parens patriae* suit for damages; that such a suit lies only in equity and only for preventive relief. *Georgia v. Pennsylvania R. Co., supra, unequivocally* determines that Georgia was [and ergo Hawaii is] "a 'person' entitled to enforce the civil sanctions of the antitrust laws." (324 U.S. at 452) The civil sanctions of the antitrust laws certainly include recovery of damages from violators thereof. As indicated earlier, the Court in denying Georgia the right to recover damages from the railroad, did so only because of the prior ruling of the Court in *Keogh v. Chicago N.W.R. Co., supra,* note 6. *Keogh* was also a suit for damages under Section 7 of the Sherman Act, 26 Stat. 210, wherein the Court determined that even though a rate-making conspiracy may have existed between the defendant railroads, nevertheless, for the purpose of a suit for damages, a rate, fixed by the Commission, until suspended or set aside, was for all

[9] *Georgia v. Tennessee Copper Co., supra; Missouri v. Illinois, supra; Pennsylvania v. West Virginia, supra.*

purposes the legal rate as between shipper and carrier, and denied Keogh's antitrust action. Absent the impact of the *Keogh* decision, the only rational inference to be drawn from *Georgia v. Pennsylvania R. Co.*, is that an antitrust suit for treble damages was properly pled by Georgia in its *parens patriae* capacity. Certainly the broad objectives of the antitrust statutes are not to be meanly or narrowly curtailed because it is a state that brings a damage claim thereunder, in a *parens patriae* capacity.

Although defendants urge that Count II "does not in fact allege any injury to the general economy of the State of Hawaii", this conclusatory argument is nullified by subparagraphs (c), (d), (e), (f) and (g) of paragraph 20 of plaintiff's complaint.[10] (See page 2, supra.)

Defendants additionally argue that any possible recovery by the State under a *parens patriae* theory must be apart from any recovery for an injury to the business or property of the State in its proprietary capacity. Defendants continue that the antitrust statutes allow damages to be recovered only for injury to "business or property." 15 U.S.C. § 15. Their position is that an injury to the economy of the State cannot be an injury to the State's "business or property."[11]

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[10]Allegation (a) is most ambiguous, and allegation (b) becomes intelligible only if the word "affect" is construed to mean "offset". See plaintiff's Count II, *supra*.

[11]Defendants cite *Highland Supply Corp. v. Reynolds Metals Co.*, 327 F.2d 725, 732 (8 Cir. 1964), as authority for the statement that the damage or injuries must be something different from that sustained by the community or general public. The words are convenient for defendants' argument, but the facts of that case have no application to the *parens patriae* problem before the court.

Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390 (1906), long ago said that a public body is injured in its "property" when it is forced to pay more for a commodity than it would absent a conspiracy. If the economy of a state can be injured, then that economy is finite and can fall within a definition of the word "property", even though it does not fall within the normal, simple definition of "business and property" under Section 4 of the Clayton Act. As indicated above, *Georgia v. Pennsylvania R. Co.* lays at rest defendants' semantic argument. It clearly there differentiated between suits for damages in the State's proprietary capacity and suits for damages in its quasi-sovereign capacity and held that damages to the State's economy, if proved, were recoverable as a distinct injury, severable from whatever injury it might suffer in its proprietary capacity.[12]

There can be no risk of double recovery from the plaintiff for any single damage. As previously stated, a *parens patriae* action cannot be brought to recover the individual damages of the State's inhabitants. If the State cannot prove injury to the State's economy—an injury completely severable from the injuries to its individual inhabitants, then of course it could recover no money damages. On this point, as well as in defendants' claim that an injury to the State's economy is of a nature too remote or speculative to be measurable in money damages (and cannot in any event be damages to a "state's busi-

[12] "But Georgia is not confined to suits designed to protect only her proprietary interests," and continued, ". . . we find no indication that, when Congress fashioned those civil [antitrust] *remedies*, it restricted the States to suits to protect their proprietary interests." 324 U.S. at 447. (Emphasis added.)

ness and property''), defendants move out of the area of pleading into the area of proof at trial. This case is at the pleading stage. Hawaii has pled a *parens patriae* cause of action that cannot be summarily dismissed. How it will prove its damage, what type of evidence will be offered, how the quantum of alleged damage is to be measured, are problems to be met *in futuro*, problems that will be dealt with at the proper time in the light of *Southern Photo Materials, Storey Parchment Co., Bigelow* and *Continental Ore.*[18]

Defendants' motion to dismiss Count II is DENIED.

Dated: Honolulu, Hawaii, this 1st day of July, 1969.

/s/ Martin Pence
United States District Judge

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[18] *Eastman Kodak v. Southern Photo Materials*, 273 U.S. 359 (1927); *Storey Parchment Co. v. Patterson Parchment Paper Co.*, 282 U.S. 555 (1931); *Bigelow. v. RKO Pictures, Inc.*, 327 U.S. 251 (1946); *Continental Ore v. Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962).

[July 2, 1969]

In the United States District Court
for the District of Hawaii

Civil No. 2826

State of Hawaii, Plaintiff,

vs.

Standard Oil Company of California, et al., Defendants.

ORDER AND CERTIFICATION FOR INTERLOCUTORY APPEAL UNDER SECTION 1292(b) OF TITLE 28 OF THE UNITED STATES CODE

The following motions of defendants came regularly on for hearing before this Court on May 29, 1969: (1) Motion of Shell Oil Company and Union Oil Company of California for a change of venue; (2) Motion to strike paragraph 16(f) of the Fourth Amended Complaint; (3) Motion to dismiss Count II of the Fourth Amended Complaint; and (4) Motion to dismiss Count III of the Fourth Amended Complaint. The issues having been briefed and argued and having been considered by the Court,

It is hereby *ORDERED:*

1. The motion of defendants Shell Oil Company and Union Oil Company of California for a change of venue is denied.

2. The motion to strike paragraph 16(f) of the Fourth Amended Complaint is granted with leave to amend.

3. Defendants' motion to dismiss Count II of the Fourth Amended Complaint is denied.

4. Defendants' motion to dismiss Count III of the Fourth Amended Complaint is granted, without prejudice.

This Court finds that its order denying defendants' motion to dismiss Count II of the complaint herein involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of this litigation. This Court, therefore, certifies its order denying defendants' motion to dismiss Count II of the complaint for interlocutory appeal under section 1292(b) of title 28 of the United States Code.

It is so *ORDERED* this 2nd day of July, 1969.

/s/ Martin Pence

Judge of the United States District Court

[Certificate of Service omitted in printing]

In the United States District Court for the District of Hawaii

Civil No. 2826

State of Hawaii,
Plaintiff,

vs.

Standard Oil Company of California, Union Oil Company of California, Shell Oil Company, and Chevron Asphalt Company,
Defendants.

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss

I, Walter A.Y.H. Chinn, Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to 79 consists of a statement of the names and addresses of the attorneys of record, a certified copy of docket entries, transcripts of proceedings, and various original pleadings as hereinbelow listed and indicated:

	Pages
Complaint and Summons	2 - 11
Third Amended Complaint	12 - 21
Notice of Motion and Motion of Defendants Standard Oil Company of California and Chevron Asphalt Company for an Order Dismissing Counts Two and Three of the Third Amended Complaint	22 - 24
Motion of Shell Oil Company to Strike Certain Allegations of Count One and to Dismiss Count Two and Count Three of the Third Amended Complaint	25 - 34
Motion of Defendant Union Oil Company of California to Dismiss or Strike Count One and to Dismiss Counts Two and Three of the Third Amended Complaint, and in the Alternative to Strike	35 - 37
Memorandum Decision on Defendants' Motions to Dismiss or Alternatively to Strike Certain Allegations of Count One and to Dismiss Count Two and Count Three of the Third Amended Complaint	38 - 44
Fourth Amended Complaint	45 - 54
Decision on Plaintiff's Parens Patriae Count	55 - 66
Order and Certification for Interlocutory Appeal Under Section 1292(b) of Title 28 of the United States Code	67 - 69
Stipulation Pursuant to Rule 11(f) of the Federal Rules of Appellate Procedure	70 - 72
Docket Entries, certified copy of	73 - 79
Transcripts of Proceedings (May 23, 1968 July 30, 1968 December 13, 1968 May 29, 1969)	enclosed

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court this 4th day of September, 1969.

/s/ Walter A.Y.H. Chinn
Walter A.Y.H. Chinn, Clerk
United States District Court
District of Hawaii
By I. P. Akana
Chief Deputy

In the United States Court of Appeals
for the Ninth Circuit

No. 24,603

State of Hawaii,
Plaintiff-Appellee,
vs,
Standard Oil Company of California,
Union Oil Company of California,
Shell Oil Company, and
Chevron Asphalt Company,
Defendants-Appellants.

[September 25, 1970]

On Appeal from the United States District Court
for the District of Hawaii

Before: Merrill, Wright and Trask, Circuit Judges

Merrill, Circuit Judge

This appeal presents the question whether a state can, under §4 of the Clayton Act, 15 U.S.C. §15,[1] maintain a suit for treble damages as *parens patriae* for injury done to the general economy of the state. We hold it cannot.

[1] "§15. *Suits by persons injured; amount of recovery*
Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

The amended complaint filed by the State of Hawaii alleges that appellants conspired to fix and maintain unreasonably high prices for motor gasoline and asphalt in Hawaii. Count I alleges losses suffered by the state in its proprietary capacity. Count II, with which we are concerned, alleges:

> "The State of Hawaii * * * brings this action by virtue of its duty to protect the general welfare of the State and its citizens, acting herein as *parens patriae,* trustee, guardian and representative of its citizens, to recover damages for, and secure injunctive relief against, the violations of the antitrust laws hereinbefore alleged."

The complaint then continues:

> "The unlawful contracts * * * have injured and adversely affected the economy and prosperity of the State of Hawaii in, among others, the following ways:
>
> * * * * *"

Then are listed the seven specifications of injury set forth in the margin.[2]

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[2] "(a) revenues of its citizens have been wrongfully extracted from [the economy of] the State of Hawaii;

(b) taxes affecting the citizens and commercial entities have been increased to [offset] such losses of revenues and income;

(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;

(d) the full and complete utilization of the natural wealth of the State has been prevented;

(e) the high cost of manufacture in Hawaii has precluded goods made there from equal competitive access with those of other States to the national market;

(f) measures taken by the State to promote the general progress and welfare of its people have been frustrated;

(g) The Hawaii economy has been held in a state of arrested development."

(The bracketed language is included in response to Hawaii's assertion that it serves to correct typographical error in the complaint as filed.)

The prayer is for injunction and for treble damages under §4 of the Clayton Act. Respecting damages under Count II, the complaint alleges:

> "Plaintiff has not yet ascertained the precise extent of said damage to itself and its citizens; however, when such amount has been ascertained, plaintiff will ask leave of court to insert said sum herein."

Appellants moved to dismiss Count II on the ground that it failed to state a claim. The motion was denied.[3] The opinion of the court in support of its order appears at 301 F.Supp. 982 (D.C. Hawaii 1969). This appeal is taken from the court's order pursuant to 28 U.S.C. §1292(b).

Appellants attack Count II on many grounds. They contend that *parens patriae* suits will not lie to recover money damages. They contend that injury to the general economy of a state is not susceptible of computation or of proof, and that allegations of such injury should not be recognized as presenting a justiciable case or controversy. The basis of our disposition of the case makes it unnecessary to reach these issues. We hold only that damages for injury done to the general economy of a state are not recoverable by the state under §4 of the Clayton Act.

Hawaii relies (as did the District Court) on *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439 (1945). Georgia, invoking the original jurisdiction of the Supreme Court

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[3]The complaint, in a third count, attempted to state a class action claim under Rule 23, Fed.R.Civ.P., on behalf of the state and all citizens who have purchased products from appellants. This count was dismissed by the court and no appeal has been taken from that order.

(Art. III, §2 of the Constitution), there sought leave to file a complaint against twenty railroad companies charging a conspiracy to fix arbitrary and noncompetitive freight rates to and from Georgia so as to prefer the ports of other states over those of Georgia. The nature of the injury allegedly suffered by Georgia is similar to that here alleged by Hawaii (see footnote 2).

Leave was granted. The Court stated:

> "Georgia as a representative of the public is complaining of a wrong which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected." 324 U.S. at 451.

And:

> "But Georgia is not confined to suits designed to protect only her proprietary interests. The rights which Georgia asserts, *parens patriae,* are those arising from an alleged conspiracy of private persons whose price-fixing scheme, it is said, has injured the economy of Georgia. * * * Suits by a State, *parens patriae,* have long been recognized. There is no apparent reason why those suits should be excluded from the purview of the anti-trust acts." 324 U.S. at 447.

As the Court made clear, however, it was concerned with the relief offered by §16 of the Clayton Act.

> "Sec. 16 of the Clayton Act provides for relief by injunction 'when and under the same conditions and principles as injunctive relief against the threatened conduct that will cause loss or damage is granted by

courts of equity.' Those requirements are sufficiently satisfied to justify a filing of this bill. It must be remembered that this is a suit to dissolve an illegal combination or to confine it to the legitimate area of collaboration." 324 U.S. at 460.

And:

"Dissolution of illegal combinations or a restriction of their conduct to lawful channels is a conventional form of relief accorded in anti-trust suits. No more is envisaged here." 324 U.S. at 462.[4]

Section 16, 15 U.S.C. §26,[5] is far broader than §4. Any person may secure injunctive relief against threatened loss or damage by violation of the antitrust laws. Section 4 provides for recovery of treble damages only by a person injured in his business or property by such a violation.

Hawaii's claim does not constitute an effort to prevent unjust enrichment by the wrongdoers through recovery by the state, for the affected consumers or for itself, of the total of direct injuries suffered by persons who are unable to seek recovery for themselves.[6] Hawaii's

[4]Thus the Court in *Georgia* did not specifically rule on the question whether damages are recoverable in *parens patriae* suits. As we have noted, we do not reach that question here.

[5]Section 16 provides in part:

"Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws * * * when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings * * *."

[6]As noted (footnote 3, *supra*), Hawaii's class action was dismissed and is not before us.

claim is over and above all such recovery by persons, or on behalf of classes, and is asserted to have independent existence quite apart from such direct injuries. In light of Hawaii's inability yet to articulate a more precise theory or measure of such damages, we are skeptical of the existence of an independent harm to the general economy. The general economy is an abstraction. It has no value in itself, save as it may (in a representational capacity on behalf of business and property generally) serve to confer value on the specific items of business or property it affects. It exists only as a reflection of the business or property values it represents.

Nevertheless, assuming *arguendo* that the general economy can suffer injury from antitrust violations independent of the injuries suffered by private persons or by the state in its proprietary role, we hold upon two closely related grounds that Hawaii's claim for money damages does not fall within §4.

1. An injury to the general economy of the state is not an injury to the business or property of the state or its people. A state can, in its proprietary capacity, engage in business. For injury suffered in these respects a state can recover under §4. *Georgia v. Evans*, 316 U.S. 159 (1942). Such was the basis for Hawaii's Count I. But the terms "business or property" are to be construed in their ordinary sense; they do not encompass all pecuniary injury, let alone all manner of damage felt by a community. *E.g., Martin v. Phillips Petroleum Co.*, 365 F.2d 629 (5th Cir.), *cert. denied*, 385 U.S. 991 (1966); *Duff v. Kansas City Star Co.*, 299 F.2d 320 (8th Cir. 1962); *Roseland v. Pfister Mfg. Co.*, 125 F.2d 417 (7th

Cir. 1942). Unless the concepts of business or property are expanded well beyond traditional usage, the general economy of a region cannot be regarded as property in possession of the residents individually or publicly.

2. Accepting that the general economy can suffer injury from antitrust violations, such injury is indirect and consequential to a degree and in a sense far beyond that usually discussed in this connection. It has long been established that one whose injury is an incidental or remote consequence of defendant's violation may not recover under the Clayton Act. *Karseal Corp. v. Richfield Oil Corp.*, 221 F.2d 358, 363 (9th Cir. 1955). Accordingly, it has been held that shareholders, *Bookout v. Schine Chain Theatres, Inc.*, 253 F.2d 292 (2d Cir. 1958); lessors, *Melrose Realty Co. v. Loew's, Inc.*, 234 F.2d 518 (3d Cir.), *cert. denied*, 352 U.S. 890 (1956); creditors, *Loeb v. Eastman Kodak Co.*, 183 Fed. 704 (3d Cir. 1910); patent owners suing for loss of royalties, *Productive Inventions, Inc. v. Trico Prods. Corp.*, 224 F.2d 678 (2d Cir. 1955); and others of like remoteness lack standing to obtain damages under the antitrust laws.

The attenuated injuries alleged by Hawaii fall far outside the area of directness contemplated by the Clayton Act. Compensation of the public (let alone treble damages) for injury of such an extraordinary character presents policy questions which, in our view, should be subjected to close Congressional inquiry and study. We do not believe that §4 as it now stands can be construed to make such recovery available.

Reversed and remanded with instructions that Count II of Hawaii's amended complaint be dismissed.

United States Court of Appeals
for the Ninth Circuit

No. 24,603

State of Hawaii,
Plaintiff-Appellee,
vs.
Standard Oil Company of California, et al.,
Defendants-Appellants.

Appeal from the United States District Court
for the District of Hawaii

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Hawaii and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and remanded with instructions that Count II of Hawaii's amended complaint be dismissed.

Filed and entered September 25, 1970.

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

E. Robert Seaver
Clerk of the Court

March 2, 1971

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Re: Hawaii v. Standard Oil Company
of California, No. 1060, O.T. 1970

"The petition for a writ of certiorari is granted. Mr. Justice Harlan took no part in the consideration or decision of this petition."